

# **The State of Texas Procurement Manual**

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# THE STATE OF TEXAS PROCUREMENT MANUAL

## Overview

### Section One

#### **Purpose**

The State of Texas Procurement Manual serves as the guide for purchasing in the State of Texas. It contains standard procedures for implementing the requirements of Texas statutes and delegated purchasing authority. The manual is a necessary resource to ensure the application of consistent and sound business practices in state purchasing and demonstrates CPA's ongoing commitment to increasing communication among agencies involved in state procurement.

State of Texas employees involved in the procurement of goods and services have a responsibility to uphold Texas procurement laws and to serve the best interests of the state. This responsibility requires a thorough knowledge of the [Tex. Gov't Code, Title 10, Subtitle D](#) and [Texas Administrative Code \(TAC\), Title 34, Part 1](#) as well as the procedures in the Procurement Manual.

#### **Scope**

The Procurement Manual contains purchasing authority requirements, procedures, and best practices applicable to the acquisition of goods and services. Content is organized into the following sections to help answer topical questions and guide a purchaser through related procedures.

#### **Revisions**

When additions or revisions are made, the revised date and section number is referenced at the end of the section. CPA sends notification of revisions to the CPA procurement [e-mail list](#). Please send comments regarding the Procurement Manual to [procurement\\_info@cpa.state.tx.us](mailto:procurement_info@cpa.state.tx.us).

#### **Definition**

The use of the term *state agency* refers to a department, commission, board, office or agency in the executive branch of state government created by the state constitution or a state statute.

## **Statutory Purchasing Authority**

To support state operations and shorten the procurement cycle for purchasers, state law grants purchasing authority to CPA, the Council of Competitive Governments (CCG), and the Department of Information Resources (DIR) to establish contracts for commonly used goods/services for state agency and local government use. Statewide contracts include Go DIRect contracts for IT/IS goods and services and CPA Term and TXMAS contracts for other goods/services.

For items not on an existing statewide contract, Government Code Chapters [2155-2161](#) and CPA 34 TAC Ch [20](#) provide additional detail on CPA purchasing oversight and contract responsibilities as well as the purchasing authority delegated to state agencies.

The following charts portray delegated authority and specific government code references.

### **CPA Non-Delegated Purchases**

#### **Commodities over \$25,000:**

*Open Market Invitations for Bid (includes Reverse Auctions)*

Gov't. Code § 2156.121

#### **Services over \$100,000:**

*Request for Proposals (RFP) -- No upper dollar limit*

Gov't. Code § 2156.121

### **State Agency Delegated Purchases and Procedures**

#### **Delegated Purchases**

Gov't. Code § 2155.132

- *Commodity Purchases under \$25,000*
- *Purchases of Services under \$100,000*
- *Direct Publications*
- *Internal Repair Purchases*
- *Perishable Purchases*
- *Fuel, Oil & Grease Purchases*
- *Distributor Purchases*
- *Emergency and Proprietary Purchases*
- *IT Commodities and Services*

#### **Public Utilities**

Gov't. Code § 2155.001

#### **Interagency Agreement Contract (IAC)\***

Gov't. Code Ch. 771

#### **Specific Statutory Exemptions**

*see chart in audit section 4.5*

Section 1.0  
Revised 08/07

# Training and Certification

## **Purchaser Training and Certification**

The 75th Legislature mandated that state purchasing personnel be trained and certified to the extent required by the Comptroller of Public Accounts (CPA). In accordance with Texas Government Code, Title 10, Subtitle D, Section [2155.078](#), CPA administers a system of training, continuing education, and certification that includes three levels of training and two levels of certification. To provide Texas with the most qualified purchasing professionals available, CPA's goal is to exceed the statutory requirement by offering a series of public purchasing courses and certification testing tailor-made for Texas. To facilitate this effort, senior procurement officials at all state agencies should assess the training and certification requirements of their employees and submit the results, as part of their annual procurement plan, to the Procurement Review division of CPA.

## **Who Should Attend**

With the exception of medical and dental units to which Section [51.9335](#), Education Code, applies or institutions to which Section [73.115](#), Education Code, applies, **all state agency purchasing personnel**, including agencies exempt from the purchasing authority of CPA, must receive purchaser training and continuing education as required by CPA.

In addition to state agencies, employees of political subdivisions and other governmental entities may attend. Examples include school districts, police and fire departments, city and county governments, and community colleges. Entities participating in CPA's cooperative purchasing program for term contracts are especially encouraged to attend. For more information, please view CPA's website at:  
<http://www.window.state.tx.us/procurement/prog/training-cert/index.html>

## **Purchaser Training**

CPA's purchaser training and certification program consists of the following three training classes:

### ***Texas Basic Public Purchasing (BPP)***

Basic Public Purchasing is an entry level survey course covering the principles of public purchasing in Texas. By taking this class the learner will be able to:

- Demonstrate a general knowledge of Texas Public Purchasing requirements.
- Explain the various steps in the procurement cycle.
- Perform purchasing responsibilities in an ethical manner.
- Prepare flexible, accurate, clear, competitive, and simple (FACCS) specifications.
- Select the state approved purchasing method that will result in a best value acquisition

for the state.

- Define their delegated purchasing authority.
- Efficiently and effectively solicit vendors.
- Compare and contrast bids and proposals.
- Make a best value determination for contract award.
- Identify logistical impacts to the purchasing process.
- Reports and document required information.
- Navigate the CPA website to find needed information.
- Enter the APP class (if required) with a minimum knowledge base.

### ***Texas Advanced Public Purchasing (APP)***

Advanced Public Purchasing is a more in-depth look at the purchasing techniques and concepts introduced in Basic Public Purchasing. By taking this class the learner will be able to:

- Use project management tools to effectively manage contracts.
- Describe how to identify and minimize risks when making high-dollar purchases.
- Apply technical writing principles and techniques to create FACCS specifications.
- Conduct negotiations using basic skills, techniques, and strategies.
- Describe the various state contracts and when to use each.
- Improve contract administration skills.

### ***Cost & Price Analysis, Negotiations, Contract Administration (CNC)***

The CNC class is an advanced class designed for experienced purchasers. By taking this class the learner will be able to:

- Explain the difference between cost and price.
- Illustrate how the economy influences pricing.
- Use cost and price analysis to help make a best value determination for contract award.
- Evaluate the steps and techniques in the negotiation process.
- Develop an effective negotiating team.
- Define the proper steps for contract termination.
- Identify and manage vendor performance strengths and weaknesses.

## **Purchaser Certification**

### ***Certified Texas Purchaser (CTP)***

For purchases between \$0.00 and \$25,000, even though no formal certification is required, individuals must have attended the Basic Public Purchasing Class within six months of employment.

CTP certification is required for individuals to make purchases between \$25,000.01 and \$100,000. The CTP Exam is a multiple choice exam that concentrates on the basics of purchasing in Texas. The exam may cover anything in the Basic and Advanced Public Purchasing classes, the CPA Procurement Manual, and other materials supplied during the classes.



To be eligible for CTP certification, you must have one (1) year purchasing experience, have completed the Basic and Advanced Purchasing classes or the equivalent (i.e. – be currently certified as CPPB by NIGP or A.P.P. by ISM), and receive a 70% or higher on the CTP exam.

### ***Certified Texas Procurement Manager (CTPM)***

The eligibility to make competitive purchases over the amount of \$100,000 requires CTPM certification.

The CTPM exam is a multiple choice exam that concentrates on advanced purchasing skills including cost and price analysis of goods and services, advanced negotiation techniques, and contract administration and management. The exam may cover anything in the Basic, Advanced, and CNC Purchasing classes, the CPA Procurement Manual, the Contract Management Guide, and other materials supplied during the classes.

To be eligible for CTPM certification, you must have three (3) years purchasing experience, have completed the Basic, Advanced, and CNC Purchasing classes or the equivalent (i.e. – be currently certified as CPPO by NIGP or C.P.M. by ISM), and receive a 70% or higher on the CTPM exam.

### **Maintaining Certification**

State of Texas purchasers certified through CPA's Training and Certification program are required to complete 120 hours of continuing education over a five (5) year period, beginning from the issue date or last renewal date of the Texas certification, with no more than 45 hours during any one year period. Purchasers may not accumulate hours and carry them forward past the expiration date of their certificate.

To assist certified purchasers with finding continuing education opportunities, CPA maintains a continuing education clearinghouse on its website (<http://esbd.cpa.state.tx.us/cptout/>)

### **Classes and Registration**

A current class schedule is listed on the Internet at:  
<https://cmbreg.cpa.state.tx.us/reg/showclasses.cfm>

Students may register for classes on-line at: <https://cmbreg.cpa.state.tx.us/reg/index.html>

Other forms (i.e., testing and certification applications) are available at:  
[http://www.window.state.tx.us/procurement/prog/training-cert/purchtrn\\_cert](http://www.window.state.tx.us/procurement/prog/training-cert/purchtrn_cert)

For additional information, please contact CPA's Training, Certification, and Procurement Review Program at 512-463-5355 or [ctp@cpa.state.tx.us](mailto:ctp@cpa.state.tx.us).

**Legal Source:** [Texas Government Code, Title 10, Subtitle D, Chapter 2155.078](#)

**Internet Sources:** <https://cmbldreg.cpa.state.tx.us/reg/showclasses.cfm>  
<https://cmbldreg.cpa.state.tx.us/reg/index.html>

## **Contract Manager Training (CMT)**

The 79th Legislature mandated that state contract management personnel be trained and certified to the extent required by the Texas Comptroller of Public Accounts (CPA). The program developed by CPA to satisfy this mandate contains four (4) levels of required training.

### **Who Should Attend**

In accordance with Texas Government Code, Title 10, Subtitle D, Section § [2262.053](#), each state agency shall ensure that the agency's contract managers complete the training developed under this section.

In addition to state agencies, employees of political subdivisions and other governmental entities may attend. Examples include school districts, police and fire departments, city and county governments, and community colleges.

A diagram found at <http://www.window.state.tx.us/procurement/prog/training-cert/cmt/training/requirements/> can be used to determine employees that are designated to attend training.

This diagram is not all inclusive and is only provided as an example for agencies to use as a guide to determine who is required to attend the contract manager training required by Gov't. Code §[2262.053](#). Specific questions regarding who should attend CMT should be directed to the State Auditor's Office.

For more information, please view CPA's website at:  
<http://www.window.state.tx.us/procurement/prog/training-cert/cmt/procurement/prog/training-cert/cmt/contrmgrfunction>

## **Contract Manager Training**

CPA's contract manager training program consists of four (4) training classes:

### ***State Government Contracting (SGC)***

This entry-level class is designed to provide participants with a broad overview of

concepts, skills, techniques, and best practices in regards to binding the state into contracts with vendors.

State Government Contracting is a pre-requisite class. All state contract managers must complete this class prior to moving on to the other classes in the Contract Manager Training curriculum. By taking this class the learner will be able to:

- Describe the structure and content of the State of Texas Contract Management Guide (guide).
- Perform their contract manager responsibilities in compliance with any requirements or goals contained in the guide and in an ethical manner.
- Define the steps involved in contract management planning and how objectives, assumptions, and constraints integrate into the larger organizational project.
- Identify, quantify, and effectively minimize contract risk.
- Explain the legal elements of a contract.
- Implement performance criteria to effectively manage vendors.

### ***Project Management for State Contract Managers (PM)***

This class is designed to provide participants with a clear understanding and working knowledge of the core elements and competencies of contract and project management. By taking this class the learner will be able to:

- Explain the project life cycle and how to incorporate the elements of project management into contract management.
- Define project management process groups and knowledge areas.
- Identify opportunities and constraints in contract development.
- Use quality control techniques to help improve the overall contract management process.
- Manage budget and costs throughout a project lifecycle.
- Assemble and manage a high-performance team.
- Effectively and successfully execute a project.

Prerequisite – Attendance of State Government Contracting class.

### ***Power Negotiations (PN)***

This class is designed to provide an in-depth look at the strategies, tactics, and skills that are effective in contract formation and negotiations. The focus on this class is negotiating major contracts (greater than \$1 million). By taking this class the learner will be able to:

- Implement negotiation strategies and techniques to influence behavior.
- Assemble and manage an effective negotiation team.
- Establish and negotiate for pricing that is cost effective and reflects the actual cost of provided services.
- Negotiate for the future.

Prerequisite – Attendance of State Government Contracting and Project Management for State Contract Managers classes

### ***Supply Chain Optimization (SCO)***

This class is designed to familiarize participants with the business functions concerned with the movement of goods, services, and information along the supply chain. This course focuses on how elements of the supply chain affect each business function in order to reach the goal of creating value for the ultimate customer. By taking this class the learner will be able to:

- Define what the supply chain is and its effects on each business function.
- Measure the impact of supply chain optimization.
- Verbalize the importance of proper planning and resource management.
- Identify elements of cost throughout the supply chain.
- Utilize techniques for making best-value sourcing decisions.
- Improve the overall quality of the contract management process.

Prerequisite – Attendance of State Government Contracting, Project Management for State Contract Managers, and Power Negotiations classes

### **Classes and Registration**

A current class schedule is listed on the Internet at:

<https://cmlreg.cpa.state.tx.us/reg-cm/index.cfm>

Students may register for classes on-line at:

<https://cmlreg.cpa.state.tx.us/reg-cm/index.cfm>

For additional information, please contact CPA's Training, Certification, and Procurement Review Program at 512-463-5355 or [ctp@cpa.state.tx.us](mailto:ctp@cpa.state.tx.us).

**Legal Source:** [Texas Government Code, Title 10, Subtitle D, Chapter 2262.053](#)

**Internet Sources** <http://www.window.state.tx.us/procurement/prog/training-cert/cmt/training/requirements/>  
<https://cmlreg.cpa.state.tx.us/reg-cm/index.cfm>

SECTION 1.1

REVISED DATE 11/08/06

# Code of Ethics & Conflict of Interest

A special responsibility is imposed on all people who are entrusted with the disposition of the state's funds. As purchasing personnel, we are required to perform with the highest integrity while we are constantly being asked to manage more effectively, to secure better economic results, to speed up the process, and to be innovative in accomplishing our mission. This is a great challenge and an exciting one!

Elected and appointed state officials as well as all state employees are entrusted with the safety and welfare of the citizenry. In return for their confidence in state government, citizens expect that state employees' private interests will not conflict with public business.

The nature of purchasing functions makes it critical that all players in the process remain independent, free of obligation or suspicion, and completely fair and impartial. Maintaining the integrity and credibility of a purchasing program requires a clear set of guidelines, rules and responsibilities to govern the behavior of purchasing employees. Credibility and public confidence are vital throughout the purchasing and contracting system. Any erosion of honesty, integrity or openness tends to be more injurious to purchasing than to most other public programs. The shadow of doubt can be as harmful as the conduct itself. It is with this in mind that the following policies and procedures are set forth.

This section states the ethical standards of conduct required of the Comptroller of Public Accounts (CPA) employees, vendors, potential vendors, and employees of other state agencies when acting under authority delegated from the CPA. Every person employed by a public purchasing agency should abide by a code of ethics. In accordance with state law and CPA Rule 1TAC 20.14, agencies in purchasing under the CPA delegated authority shall adhere to the following ethical standards:

## **A state employee may not:**

- participate in work on a contract by taking action as an employee through decision, approval, disapproval, recommendation, giving advice, investigation or similar action knowing that the employee, or member of their immediate family has an actual or potential financial interest in the contract, including prospective employment;
- solicit or accept anything of value from an actual or potential vendor;
- be employed by, or agree to work for, a vendor or potential vendor;
- knowingly disclose confidential information for personal gain; or
- be employed at a pay classification of an A 17 or B 9, Step 1 or higher if the spouse of an officer, manager, or paid consultant of a Texas trade association of businesses that contracts with the state. (See your Human Resources representative for verification of the new equivalent pay classification which became effective 09/01/97).

### **A former employee:**

A former employee who had a pay classification of A 17 or B 9, Step 1 (see above note) or higher who ceases service or employment with a state agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter (a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge or other proceeding, contract, claim, charge or other proceeding) in which the former employee participated during the period of employment, either through personal involvement or because the case or proceeding was a matter within the employee's official responsibility.

### **A vendor or potential vendor may not:**

- offer, give, or agree to give an employee anything of value; or

### **If a violation occurs:**

When an actual or potential violation of any of these standards is discovered, the person involved shall promptly file a written statement concerning the matter with an appropriate supervisor. The person may also request written instructions and disposition of the matter.

If an actual violation occurs or is not disclosed and remedied, the employee involved may be reprimanded, suspended, or dismissed. The vendor or potential vendor may be barred from receiving future contracts and/or have an existing contract canceled.

Purchasing professionals have the right under law to have any ethics question reviewed and decided by the State Ethics Commission. If you wish to learn whether a specific action violates the ethics rules, please contact the State Ethics Commission, 1101 Camino La Costa, Austin, Texas 78752 or call them at (512) 463-5800 or 1-800-325-8506 for outside of Austin.

**The ethics provisions of 1 Tex Admin Code §111.4 apply to employees, vendors and potential vendors acting under delegated authority. In consultation with the Comptroller's Office, the Ethics Commission is required, under Section 1.07 of House Bill 3560, to adopt new rules to implement the specific ethics provisions of that legislation as they relate to TPASS. Likewise under Section 3.10 of House Bill 3560, the Ethics Commission is required to adopt new rules to implement the specific ethics provisions of that legislation as they relate to the Texas Facilities Commission.**

### **Conflict of Interest:**

In accordance with Texas Government Code, Title 10, Subtitle D, Section [2155.003](#), CPA requires that all employees of the CPA sign a Conflict of Interest statement each year. All purchasing staff of a state agency who have been delegated the authority to purchase must also sign a Conflict of Interest statement each year. One copy of the signed statement should be given to the employee, one copy should be filed in the employee's

personnel file and another copy should be filed in the employee's supervisor's file. On the next page is the Conflict of Interest statement used by CPA. This may be created in any format (memo or certificate that may be framed).

# **CONFLICT OF INTEREST**

## **TEXAS GOVERNMENT CODE TITLE 10 SUBTITLE D SECTION 2155.003**

Under Section 2155.003 of the Texas Government Code, a CPA employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual which outlines the ethical standards required of public purchasers, employees, and vendors who interact with public purchasers in the conduct of state business. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of CPA or purchasers of other state agencies.

I certify that I have read and understand the above statement.

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Employee Signature

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Date

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Printed Name

cc: Personnel File  
Supervisor's File

SECTION 1.2  
REVISED DATE: 10/2007

# **Reports and Notifications**

The following reports and notifications are required by the Legislature, Legislative Budget Board (LBB), Comptroller of Public Accounts (CPA) rules, or other statutory authority:

## **Professional and Consultant Services (Due to LBB no later than 10 days after contract award)**

See Section 2.20 Professional and Consultant Services

## **Construction Contracts (Due to LBB no later than 10 days after contract award)**

The commission or an agency whose project is exempted from all or part of this chapter under Section [2166.003](#) shall provide written notice to the LBB of a contract for a construction project if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, is \$14,000 or greater. The notice must be on a form prescribed by the LBB and filed not later than the 10th day after the date the agency enters into the contract. <sup>1</sup>

## **Monthly Report of Set Aside Exceptions (Due to CPA by the 15th working day of each month)**

See Section 2.5 Special Purchases

## **Expenditures for Recycled Material (Due to CPA by January 1st of each year)**

See Section 4.0 Recycled, Remanufactured and Environmentally Sensitive Products

## **Historically Underutilized Businesses (Due to CPA by March 15th and September 15th)**

See Section 2.28 Historically Underutilized Businesses (HUB) Program

## **Procurement Plan (Due to CPA by November 30th)**

See Section 4.2 Procurement Plan

## **Contract Workforce (Due to LBB, Governor & State Auditor's Office (SAO) by December 1st)**

No later than December 1 of each year of the biennium, an agency shall file with the LBB, Governor's Office, and SAO a report on the agency's use of a contract workforce in the preceding fiscal year. The report shall be prepared according to a format prescribed



by SAO and shall include:

- A description of how the agency has complied with provisions of this rider; and
- An evaluation of the work performed by a contract workforce, including an assessment of whether work was completed on time, within budget, and according to contract specifications.<sup>4</sup>

**Legal Authority:**

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[<sup>1</sup>Texas Government Code, Title 10, Subtitle D, Section 2166.2551](#)

<sup>4</sup>General Appropriations Act, 77th Legislature, Article IX, Sec. 4.07

Rev. 04/28/06

Section 1.3

## **Identify End-Users Needs**

The end user will communicate to the purchaser(s) the commodity or services needed. The most common document used to identify the need is a purchase requisition. The requisition should include the specifications of the commodity or service that an end user seeks to procure.

A specification is a detailed description of a product or service that a user seeks to procure, and consequently, a description of what a bidder must offer to be considered for an award. Specifications are the primary means of communication between an agency and a vendor (see Section 2.23 Specifications).

Specifications control the following procurement aspects:

- the quality of the product
- the amount of competition
- suitability of the product or service for the job
- the method of evaluation used in making an award and in determining the bid with the best value for the purchase

SECTION 2.0

REVISED DATE: 06/98

# **Acquisition of Surplus Property**

## **Federal and State Surplus Property**

The Federal and State Surplus Property programs are administered by the Texas Facilities Commission (TFC).<sup>1</sup> Each program has its own law, rules, and procedures.<sup>2</sup>

## **Federal**

State agencies, political subdivisions, and certain nonprofit organizations are eligible to receive federal surplus property through TFC. Participating groups must be approved by TFC as eligible according to federal regulations to receive donated property.

The federal surplus property program operates on a cost recovery basis; it is not funded by the legislature. Participants pay a handling fee, which is a fraction of the original acquisition cost, to obtain property through the program.

Federal surplus property is distributed through two districts in Texas. The North District is located in Fort Worth and the South District is located in San Antonio. Each regional office operates a warehouse where surplus property is collected, sorted, and stored prior to distribution. Participating organizations can send authorized representatives to either warehouse to inspect and obtain property. Opportunities also exist for participating agencies to pick up property at government locations that may be located at a site more closely to them than a district warehouse. TFC publishes a complete inventory of federal property on its website at: <http://portal.tfc.state.tx.us/surplus/federal/>. Further information may be obtained by calling the Federal Surplus Property Program at (512) 475-3705.

## **State**

State agencies that have surplus property are required to list it on the Comptroller of Public Accounts website for 10 business days. During that time only eligible entities, including other state agencies, political subdivisions, and approved assistance organizations can obtain the property. A list of available surplus property and state agency contacts is available on the Internet at the following address: <http://www.texasahead.org/lga/surplus/>. The list is updated nightly.

During this 10-day period, the agency that owns the property determines the price, if any, for each item. State agencies have priority over all other eligible entities during the 10-day period. If no state agency requests the property, the first political subdivision or assistance organization that commits to the price is entitled to the property.

State agencies and political subdivisions automatically qualify to receive surplus property. Assistance organizations interested in obtaining surplus property are required to apply for program eligibility with the TFC. If TFC approves an assistance organization's application, it will be eligible to receive property from all state agencies for a period of two years, unless otherwise specified. After two years assistance organizations must re-apply to participate in the program. The Application for Assistance Organizations form is located on the TFC website at:

<http://www.tfc.state.tx.us/communities/supportserv/prog/statesurplus/assistance-organization-eligibility>. A list of approved assistance organizations is located on the TFC website at:  
<http://www.tfc.state.tx.us/communities/supportserv/prog/statesurplus/approved-assistance-organization>.

For additional information, call the Surplus Property Program at 512-463-2688.

### **Retail Storefronts**

The State of Texas operates retail storefronts for the sale of state surplus property to the public in the following locations:

#### **Austin District**

6506 Bolm Road  
Austin, Texas 78721  
Phone: 512-463-1990

#### **Fort Worth District**

2826 North Beach Street  
Fort Worth, TX 76111-6201  
Phone: 817-831-6767

#### **San Antonio District**

2103 Ackerman Road  
San Antonio, TX 78219-3017  
Phone: 210-661-2381

Inventories can be found at the Surplus Property section of the TFC website under Retail Store/Locations and Inventories.

State agencies may obtain property priced at less than \$200 for official use from the storefront locations free of charge. State agencies may obtain property priced at more than \$200 for official use for half price.

For additional information on the State Surplus Storefronts, call 512-463-1990.

### **Legal Authority:**

[1 - Texas Government Code, Title 10, Subtitle D, Chapter 2175](#)

2 - Federal Surplus Property: Texas Government Code, Title 10, Subtitle D, Chapter 2175, Subchapter G and 40 USC §484; Title 34, Texas Administrative Code, Chapter 20.

State Surplus Property: Texas Government Code, Title 10, Subtitle D, Chapter 2175, Subchapter A thru F; Title 34, Texas Administrative Code, Chapter 20.

SECTION 2.1

REVISED DATE: 11/14/06

## Trade-Ins

A state agency may trade-in equipment that it owns for new property of the same or similar type if it is in the best interest of the state. However, a state agency may not trade in property that has been declared either surplus or salvage; such property must be disposed of under applicable state law or CPA's surplus property program. Furthermore, trade-ins are not allowed on CPA term contracts or scheduled purchase items.

Before making any trade-in an agency should document the age, condition, make, model and serial number (if applicable) of the used equipment and estimate its approximate value. If the state could reasonably realize greater cost savings by declaring the equipment as surplus or salvage, the equipment should be disposed of under applicable state law or CPA's surplus property program. See Section 2.62 Disposal of Property. However, if an agency determines that a trade-in offers the best value to the state, an agency shall in addition to the above requirements include in the solicitation document the following:

- Less trade-in at state's option: to be picked up by the successful bidder where is, as is" as per agency terms and conditions. Provide a deadline in terms of the number of days for the vendor to remove the used equipment; and
- Each type of trade-in allowance must be shown on the solicitation document as an individual line item;
- Used equipment will not be released to the vendor on a trade-in until the purchased equipment is received unless the ordering entity receives a bond, letter of credit or similar instrument as collateral.

If not used as a trade-in, the equipment must be disposed of as surplus or salvage property (see Section 2.62 Surplus). Since the ordering entity may profit more from the sale of old equipment as surplus property than as a trade-in, the estimate of the equipment's value is extremely important. Surplus rules require competitive bidding in the disposition of surplus property, which cannot be accomplished against contract purchases.

**Note:** The CPA does not recommend that used equipment be released to the vendor on a trade-in until the purchased equipment is received unless the ordering entity receives a bond, letter of credit, etc. as collateral. If a lease has a trade-in feature, it is highly recommended that the trade-in value be applied to the first six (6) months of the lease.

SECTION 2.2

REVISED DATE: 01/13/03

## Used Equipment

As a rule, the purchaser should procure new equipment, but sometimes it is necessary or advantageous to purchase used or demonstrator equipment and supplies. The most common reasons are:

- the inability to secure new equipment;
- the lack of adequate funds for new equipment; or
- used equipment will satisfy the agency's need at a substantial savings.

### **Purchases of used and demonstrator equipment are to be processed as follows:**

The ordering entity must:

- obtain a minimum of three (3) signed bids which have been properly prepared whenever possible;
- if only one bid is received, prepare a statement explaining why no competition exists;
- provide a letter or signed statement from the bidder(s) guaranteeing quality and condition of the merchandise offered;
- provide a letter from an authorized person connected with the ordering entity that:
  - a. states that the equipment or supplies have been personally examined, and
  - b. describes the condition and value of the equipment or supplies;
- forward to the CPA with an open market requisition if the purchase exceeds your delegated authority.

If the CPA determines that the purchase is appropriate, a purchase order will be issued. Alternatively, the CPA may advertise the requisition using open market procedures.

SECTION 2.3

REVISED DATE: 06/98

# Selecting a Procurement Method

## Introduction

Selecting the correct procurement method is one of the most critical aspects of the procurement process. The following procedure navigates the many choices for procuring goods and services for the State of Texas. The strategy is a process of elimination. Procurement methods are eliminated by comparing their requirements with the specification or SOW (Statement of Work) and estimated purchase price. The steps in the following procedure should be followed sequentially unless otherwise indicated in a step.

## Procedure for Selecting a Procurement Method

1. Collect the following:

- The detailed specification or SOW for the required good or service. See *Section 2.0 Identify End User Needs* for more information on specifications.
- Requirements, such as maximum time to delivery, special circumstances, etc.
- A reasonable estimate of the good or service's purchase price based on a market survey, a catalog price comparison or a previous purchase of the same specification or SOW.

2. If the requirements and Specification or SOW meet the criteria for:

- a. **Emergency purchase**, follow the procedure in *Section 2.18 Emergency Purchases*.
- b. **Internal repair**, follow the procedure in *2.11 Delegated Purchase Procedure*.
- c. **Proprietary purchase**, follow the instructions in *Section 2.21 Proprietary Purchases*.
- d. **Scheduled Purchase Contract**, follow the procedures in *Section 2.9 Scheduled Purchase Contracts*.

3. If the SOW meets the criteria for:

- a. **Professional and consulting services**, purchase it using instructions from *Section 2.20 Professional and Consultant Services*
- b. **Telecommunications** services, follow the instructions for procuring telecommunications services in *Section 2.21.1 Department of Information Resources Contracts*.

4. Compare the requirements and specification or SOW with the commodities and services provided:



- a. On **CCG** (Council on Competitive Government) contracts.<sup>1</sup> If the commodity or service is available on a CCG contract, purchase it according to the instructions in the CCG contract. *See Section 2.21.2 Council on Competitive Government Contracts* for more information.
- b. In the **TIBH Industries, Inc. Catalog**. If a TIBH Industries, Inc. commodity or service meets the specification and other requirements, purchase it from TIBH Industries, Inc. *See Section 2.5.1 The Texas Council on Purchasing from People with Disabilities* for more information.
- c. In the **TCI (Texas Correctional Industries) Catalog**. If a TCI commodity or service meets the specification and other requirements, purchase it from TCI. *See Section 2.5.2 Texas Correctional Industries* for more information.
- d. On DIR's (Department of Information Resources) [IT Commodity List](#)<sup>2</sup>. If the specification or SOW is for **commodity items**, consider purchasing from [GoDIRect Program](#) contracts. *See Section 2.21.1 Department of Information Resources Contracts* for more information.

5. Compare the requirements and specification or SOW with commodities and services provided on:

- a. **CPA Term Contracts**. If a CPA Term Contract commodity or service meets the specification, note its price for your best value determination. *See Section 2.7 Term Contracts* for more information on CPA Term Contracts.
- b. **CPA TXMAS Contracts**. If the specified commodity or service is available on TXMAS Contract, obtain a price quote from as many TXMAS vendors as are necessary to provide a best value determination. *See Section 2.9.1 Texas Multiple Award Schedule Contracts* for more information on CPA TXMAS Contracts.

6. If you were unable to find the specified commodity or service in a CPA Term Contract, TXMAS Contract, go to Step 8.

7. Compare the collected prices from Steps 5 through 5.c. Use the procurement process that provides the best value to the State of Texas. For example, if a TXMAS contract provides the best value, use the TXMAS process outlined in *Section 2.9.1 Texas Multiple Award Schedule Contracts* to purchase the specified item or service. Include the following statement on the agency copy of the PO:

“Procurement methods were evaluated and best value is provided by {insert ‘CPA Term Contract,’ ‘TXMAS Contract.’”

8. If the specification or SOW is for:

- a. A commodity or service with an estimated purchase price not greater than \$5,000,
- b. A commodity with an estimated purchase price not greater than \$25,000,

- c. A service with an estimated purchase price not greater than \$100,000,
- d. A perishable commodity,
- e. A direct publication,
- f. Fuel, oil or grease,
- g. A distributor purchase, or
- h. An internal repair

then the authority to administer the competitive process is delegated to your agency. Follow the instructions in *Section 2.11 Delegated Purchase Procedure*.<sup>3</sup>

9. If you have reached this step, CPA administers the competitive process. Follow the instructions in *Section 2.4.1 Non-Delegated Purchase Procedure*.

<sup>1</sup>The website for CCG is <http://www.ccg.state.tx.us>

<sup>2</sup><http://www.dir.state.tx.us/store/busops/softwarepublishers.htm>

<sup>3</sup>Texas Administrative Code Title 34, Part 1, Chapter 20, Rule [20.41](#)

SECTION 2.4

REVISED DATE: 1/04/05

## **Special Purchases**

### **Texas Council for Purchasing from People with Disabilities (currently TIBH)**

This entity is not a state agency. Commodity items and services offered in the Texas Industries for the Blind & Handicapped (TIBH) catalogue are reviewed and approved by the Texas Council on Purchasing from People with Disabilities. The council's purpose is to encourage and assist disabled persons to achieve maximum personal independence by engaging in useful and productive activities. Please note the following:

- If a product is approved, it is set aside from competitive bidding and is put on a Comptroller of Public Accounts (CPA) term contract; and
- Purchases of services, approved by the Texas Council on Purchases from People with Disabilities, from the TIBH catalogue do not require competitive bidding.

### **Monthly Report on Set Aside Exceptions (Due 5th working day of each month)**

The Human Resources Code, Section 122.16, Subsection (b), requires the CPA to provide a monthly report to the Texas Council on Purchasing from People with Disabilities (TCPPD) listing all items/services purchased as exceptions to Subsection (a) of Section 122.16 and Texas Government Code, Title 10, Subtitle D, Section 2155.138, Subsection (a). In order for CPA to provide this information to the TCPPD, each state agency must provide to CPA all delegated purchases made as exceptions to the set-aside contracts as listed below. The report must include:

- Description of products/services purchased as exception
- Requisition Number
- Date of Requisition
- CPA Commodity Code (Class & Item)
- Quantity of product or duration of service purchased as exception
- Reason purchase was made as exception
- Dollar amount of purchase
- Unit price

The reporting format for this information should be in Microsoft Word and a form for this purpose is located in Section 4.3 of the Procurement Manual.

It is important that the form be used to assure the information required is usable. Please send this report, via e-mail to [TCPPD@cpa.state.tx.us](mailto:TCPPD@cpa.state.tx.us) or fax to Central Procurement at (512) 463-8872 AND the TCPPD Program Administrator at (512) 463-3564. Please send a report even if you have no activity during the reporting month and put N/A on the form.

**Texas Department of Criminal Justice (TDCJ) / Institutional Division (Texas Government Code, Chapter 497, Subchapter A, Section 497.023 - 497.029):**

Competitive bidding is not required for items purchased from TDCJ under the Prison Made Good Acts, except for printing. Printing requires three bids and one bid must be from TCI. In order to use this procedure, the following steps are to be taken:

- A written quotation is obtained from TDCJ/Institutional Division (Texas Correctional Industries-TCI).
- If the quotation is within the agency's delegation limit (see Section 2.11 General Procedures), the agency issues a purchase order directly to TDCJ - Institutional Division. Note the following on the purchasing documentation, **"the award was made under the Prison Made Goods Act and is noncompetitive."** Code as a document type 9 when a warrant must be issued or Interagency Transaction Voucher (ITV) to electronically transfer payment.
- If the quotation is beyond the agency's delegation, an open market requisition is sent to the CPA with the quotation attached. Note the following on the requisition: **"Please award to TDCJ per attached quotation."** The CPA will issue an order directly to TDCJ without going to the open market for bids.

#### **PRISON MADE GOODS ACT WAIVER (TDCJ)**

The Prison Made Goods Act, requires that an agency purchase goods made by and services offered by the Texas Correctional Industries (TCI). If a product/service offered by TCI as set forth in its catalog of products and services needs to be purchased from a source other than TCI, a waiver from TCI must be obtained. The waiver request can be based on a substantial difference in specifications which could include delivery, or on substantial price differences, or both. **Note:** TCI is located on the CMBL list and bids for printing must include a bid or no bid response (in lieu of the waiver) for this commodity.

In order to request a waiver from TCI, the following form on page 3 must be completely filled out and submitted to TCI:

Address: TCI Customer Service - Waiver Request

P. O. Box 4013

Huntsville, TX 77342-4013

FAX to: TCI Customer Service - Waiver Request

(936) 437-6856

The waiver request shall include the following as a minimum:

- Name and title of the appropriate agency contact person
- Agency name and mailing address
- Agency contact phone and FAX numbers
- Description of items - Include complete specifications that address the characteristics of the item, construction method, detail of differences between the product/service desired and the item offered by TCI.

**Note:** This description must be complete to permit correct comparison and timely processing of the request.

- Justification - Explain why the TCI product/service does not meet the agency requirement.
- Price & Quantity - State the quantity and the estimated unit price of each item. If system furniture, be certain to specify quantity and cost of completed workstations. If the request is for component parts only, specify this and identify the parts.
- Delivery time from receipt of order - State a realistic time requirement. A delivery date inconsistent with contract terms or normal industry standards shall be justified by a written certification from the agency director of purchasing. Specify delivery in terms of month, day and year that the product/service is needed.

Waiver requests will be evaluated on a case-by-case basis. Should a request be denied, an appeal may be made to the CPA. To expedite processing an appeal, be sure to provide the waiver identification number found on your waiver denial letter.

Further clarification may be obtained by calling TCI Customer Service at (409) 294-6384.

## Texas Government Code, Chapter 497 Waiver Request Form

Contact Information	
Agency Contact Name:	
Agency/Department:	
Address:	
Telephone Number:	
Fax Number:	
PO or Internal Ref. No:	
Required Delivery Date:	

Item Name	Catalog Number	Qty.	Each Price
Justification			

SECTION 2.5

REVISED DATE: 04/99

## Term Contracts

The Comptroller of Public Accounts (CPA) establishes term contracts by commodity/service codes as a supply source for user entities. Contracts are based on estimated quantities, specified by the CPA, and may be ordered as needed. There are two basic types of term contract purchases - **Automated** and **Non-Automated**.

**Automated Contract - Purchase Category Code (PCC) A** (see Section 2.61)

Term contract purchase orders are generated by CPA through two processes.

On-line access to Impala/Telnet for direct entry by ordering entities or through the completion of a Contract Purchase Requisition form

The automated term contracts may be viewed on the Internet at the following address: [http://www.window.state.tx.us/cat\\_page/](http://www.window.state.tx.us/cat_page/). See specific term contracts for minimum purchase limits, etc.

The information required for both on-line entry and the Contract Purchase Requisition form is:

- 1) Agency/Ordering Entity unique requisition number
- 2) Quantity
- 3) Unit of Measure from the CPA Term Contract
- 4) 11-digit commodity code number

If an ordering entity does not have on-line access to CPA's purchasing system, the Contract Purchase Requisition form, which can be found in Section 4.3, Procurement Forms Library, must be completed and forwarded to the CPA by fax to 512-475-0851, Attn: Texas Procurement and Support Services (TPASS) or by regular mail/interagency mail to:

Attn: Texas Procurement and Support Services (TPASS)  
1711 San Jacinto  
Austin TX 78711

A CPA purchase order is issued with a 6 digit PO # along with the ordering entity's referenced requisition number. Copies of the purchase order are mailed to the vendor, ordering entity, and then forwarded to CPA Records Management.

Immediately upon receipt, the purchase orders should be reviewed by the ordering entity for completeness and accuracy as ordering entities are responsible for any errors. Errors found should be corrected by the Purchase Order Change Notice (POCN) process and the sole responsibility of the ordering entity and is to be mailed to the vendor with a copy to CPA (Reference Section 2.49) a copy of the POCN document can be found at:

[http://www.window.state.tx.us/procurement/tools/proc\\_forms/index.html](http://www.window.state.tx.us/procurement/tools/proc_forms/index.html).

A POCN does not generate additional purchase order documents from CPA. The POCN becomes an official part of the procurement file.

**Note:** To request on-line access, please contact Operations Support at (512) 463-3391 or email [lorrie.martinez@cpa.state.tx.us](mailto:lorrie.martinez@cpa.state.tx.us).

**Agencies are required to utilize the term contracts unless they fail to meet their needs. In such a case, the justification should be documented on the Agency's purchase order and in the procurement file.**

### **Non-Automated Contract (PCC) C**

The non-automated term contract requires manual processing by the ordering entity, usually because of the more specialized nature of the contract purchase or the contract terms. Refer to the specific CPA term contract to determine whether the contract is automated or non-automated.

The Non-Automated Purchase Order form can be located in Section 4.3 Forms and should be mirrored as much as possible.

Non-Automated Contracts are identified in the term contract listing with an "N" as part of the Contract Number (ex: 999-N1)

Ordering entities will process Non-Automated purchase orders **directly to the vendor**. The ordering entity requisition number will be the official purchase order number. A copy of the purchase order must be forwarded to the CPA Procurement –Operations Support to update purchase history files.

The five (5) digit CPA vendor number indicated on each contract by each vendor's contact information must also be included on each Non-Automated PO.

The non-automated term contracts can be found at the following address:  
[http://www.window.state.tx.us/procurement/tools/proc\\_forms/index.html](http://www.window.state.tx.us/procurement/tools/proc_forms/index.html).

Ordering entities should contact the awarded vendor(s) for current catalogs and/or price lists as detailed in each Non-Automated Term Contract. Follow the procedures outlined in the contract for each type of term contract purchase.

### **Pricing**

In order to enable the CPA to create long term contracts, many contracts allow the vendor to increase or decrease prices in accordance with the terms and conditions of the contract. All term contract price changes must be submitted in writing by the vendor and approved by the CPA.

After a price change is approved, CPA will update the contract(s) to reflect the changes for within five to seven days or for the date as agreed upon by CPA and the vendor. These changes will be available on the CPA web page. Orders placed after the price



change will be subject to the new pricing. In the case of automated contracts, the date of the order will be determined by the date it was generated by the CPA computer system, except for Confirmation Orders (see below). Information concerning price changes on an individual contract can be found in the General Contract Information (GCI) pages at the beginning of each contract.

### **Confirmation Orders**

A contract vendor may choose to accept phone orders before receiving the actual written order. Because this is not a requirement in the terms of a CPA contract, it is strictly the vendors' decision to accept a phone order or not. Telephone ordering on CPA contract items should be used only in special cases and should not become a standard procedure.

If the vendor accepts the phone order, follow the procedures for placing an Automated or Non-Automated term contract order. For Automated Term Contract purchase orders:

On-line – enter confirming date in Item 04 of the requisition screen

Contract Purchase Requisition form - document with **“Confirmation Order – (Date)”**

Non-Automated PO - document with the clause: **"Confirmation Order of (Date) - Do Not Duplicate. Order confirmed with (Name)"**.

The date is critical as it determines the price which will be used. If you fail to do this, the vendor may ship the order a second time when the written order is received and your ordering entity will be liable for payment of the duplicate order or restocking charges if a return is requested.

In the event of a price increase during the time between placing the verbal order and the date of the written order, the verbal order date will prevail.

### **Blanket Term Contract Orders**

In special cases, blanket orders can be requested for CPA term contract items. Blanket orders are for stated delivery quantities on specific dates and the quantities are guaranteed. Blanket orders must be approved by CPA; therefore, on-line entry is not permitted. Blanket order requests must be submitted to CPA on the Contract Purchase Requisition form.

**General Instructions, Terms and Conditions** The bidder is required to follow specific instructions, terms, and conditions when submitting a bid for a term contract. For a copy, contact the CPA purchaser listed in the General Contract Information pages of the specific contract.

**Note:** The General Contract Instructions are modified by specific term contract requirements on some contracts. For information concerning a specific contract, contact the appropriate CPA purchaser.

**Internet Source:** <http://www.window.state.tx.us/procurement>

SECTION 2.7

REVISED DATE: 10/23/07

# Open Market Purchases

## **Introduction**

An **open market** purchase is the purchase of a good or service made by soliciting from any available source.<sup>1</sup> The **open market purchase procedure** is the method for making an open market purchase. The open market purchase procedure is authorized by [Texas Government Codes 2155.062\(a\)\(3\)](#) and [2156.061](#). This section of the Procurement Manual provides instructions for how to administer the competition in an open market purchase. It does not dictate who administers the competitive process. To be certain your agency has been delegated authority to administer a given open market purchase, follow the instructions in Section 2.4, Selecting a Procurement Method.

The open market procedure always includes a competitive bidding process. The goals of the open market purchase procedure are to ensure a truly competitive purchase process and to provide an appropriate balance between administrative costs and potential savings.

## **Open Market Blanket and Standing Purchase Orders**

In addition to single-purchase POs (purchase orders), CPA or your agency may establish open market blanket POs and open market standing POs. Each of these types of PO may include a provision for renewal. Guidelines for each of these POs follow.

### **Open Market Blanket Purchase Orders**

An **open market blanket purchase order** is a purchase contract for a good or service for which your agency has a repetitive need on an "as-required" basis. The advantages of this type of order include avoiding large inventories and avoiding the administrative expense of processing frequent purchase orders. A disadvantage of this type of order is that purchase quantities are not guaranteed, which may not result in the best prices.

With an open market blanket PO, the vendor does not ship goods or perform services until your agency authorizes them to do so in writing, via a "call out." Establish a procedure for recording blanket order call outs to assist your agency in meeting order inspection requirements.<sup>2</sup> Purchase order call outs may only be used to purchase goods for the fiscal year to which they apply. For example, you may not purchase consumables for the next fiscal year using a blanket PO established for the current fiscal year. When establishing an open market blanket PO, include the following:

- The beginning and ending time period for the blanket order.
- A statement noting that all deliveries will be ordered on an "as required" basis.
- The estimated quantity.
- A statement limiting the maximum quantity that may be purchased.
- A statement that none of the quantities are guaranteed.

## **Open Market Standing Purchase Orders**

An **open market standing purchase order** is a purchase contract for a good or service for which your agency has a repetitive need and can predetermine purchase quantities and delivery times. Open market standing POs differ from open market blanket POs in that the goods are delivered on a predetermined schedule instead of on an as-needed basis. Open market standing POs differ from scheduled purchase contracts in that they are usually single-agency in scope and have a significantly smaller volume than scheduled purchase contracts. See Section 2.9, Scheduled Purchase Contracts, for more information.

## **Renewing Open Market Blanket and Standing Purchase Orders**

To renew an open market purchase order, the following conditions must apply:

1. There must be a provision in the specifications allowing for renewal. This provision may or may not require consent from the vendor.
2. The renewal must be requested before the contract has expired.

## **Open Market Purchase Procedures**

Open market purchases are made both by CPA and by agencies. See Section 2.4, Selecting the Procurement Method, to determine if an open market procedure is appropriate for a given purchase. The correct open market procedure for a purchase depends on the estimated dollar amount of the purchase and whether or not your agency has been delegated the authority to make the purchase. For this reason, this subsection is divided into three parts:

- **Open Market Informal Solicitation** is used for agency-administered open market purchases of commodities or services greater than \$5,000 but not greater than \$25,000. This process might be used by an agency to purchase perishable goods.
- **Open Market Formal Solicitation** is used for agency administered open market purchases of commodities or services greater than \$25,000. For example, this

- process could be used by your agency to purchase fuel, oil or grease, or for a service purchase in excess of \$100,000 that has been delegated to your agency.
- **CPA Administered Open Market Purchase** is used for CPA-administered open market purchases of commodities or services. This process is used for all open market purchases that are not delegated to your agency.

## **Open Market Informal Solicitation**

Open Market Informal Solicitation is used for agency-administered open market purchases of commodities or services greater than \$5,000 but not greater than \$25,000. The following provides instructions for performing an Open Market Informal Solicitation. See Section 2.4, Selecting a Procurement Method, to determine whether this process is appropriate for a given purchase.

1. Collect the detailed specification for the required good or service. See Section 2.0, Identify End User Needs, for more information on specifications.
2. Using the [CMBL](#), locate vendors in the applicable highway district who provide the required good or service until you have a list of at least three (3) vendors<sup>4</sup> of which two (2) must be HUB (Historically Underutilized Business) vendors who provide the required commodity or service and also service the specified highway district.<sup>3</sup> If you are unable to locate at least two (2) appropriate HUB vendors using the [CMBL](#), note this in the procurement file.
3. If it will enhance competition, you may add non-CMBL vendors to the final bid list with written approval from the head of your agency or designee.<sup>5</sup> If applicable, also attempt to solicit a bid from the vendor who last held the contract for the required good or service.<sup>6</sup>
4. Solicit and collect a bid for the required good or service from each vendor identified in the previous steps. Bid prices are considered firm for acceptance for 30 days from the bid opening date for open market purchases.<sup>7</sup> The acceptable methods for soliciting and collecting informal bids (greater than \$5,000 but not greater than \$25,000) are:
  - a. In person.
  - b. Via direct mail.
  - c. Over the telephone.
  - d. Via facsimile transmission.
  - e. Via electronic mail.<sup>8</sup>

5. Tabulate the bids and select the vendor who provides best value to the State.<sup>9</sup> Include the following information in your tabulation:

a. Vendors contacted, including those who did not respond, and their corresponding bid amounts.

b. For HUBs, the ethnicity/gender of the CPA Certified HUB.

c. Agents contacted and their telephone numbers, email addresses, etc.

d. Awarded vendor.

e. Statement of reasons for award.<sup>10</sup>

6. Keep a record of all open market bids. Make open market bid tabulations open for public inspection, and retain the tabulation of the bids for inspection by the state auditor or the auditor's representative.<sup>11</sup>

7. Issue a PO and make the award by obtaining the signature of your agency's purchasing director or their designee as reflected in your agency's Procurement Plan.<sup>12</sup>

## **Open Market Formal Solicitation**

Open Market Formal Solicitation is used for agency administered open market purchases of commodities or services greater than \$25,000. The following provides instructions for performing an Open Market Formal Solicitation. See Section 2.4, Selecting a Procurement Method, to determine whether this process is appropriate for a given purchase.

1. Collect the detailed specification for the required commodity or service. See Section 2.0 Identify End User Needs, for more information on specifications.

2. Using the specification, create a written IFB (Invitation for Bid). See the [Procurement Forms Library](#) for a sample.<sup>13</sup>

3. Post the solicitation information to the [ESBD](#) for (Electronic State Business Daily) unless the purchase is explicitly exempted from [Texas Government Code Chapter 2155, Subchapter B, 2155.083](#).

4. Using the [CMBL](#) (Centralized Master Bidders List), locate all vendors who provide the required commodity or service and also service your highway district.<sup>14</sup> If the procurement is a service purchase in excess of \$100,000, do not limit the search to your

highway district.<sup>15</sup> Print the vendor list from the [CMBL](#) and include it in the procurement file.

5. If it will enhance competition, you may add non-CMBL vendors to the final bid list with written approval from the head of your agency or designee.<sup>16</sup>

6. Solicit a bid for the required commodity or service from each vendor identified in the previous steps. If applicable, also attempt to solicit a bid from the vendor who last held the contract for the required commodity or service.<sup>17</sup> The acceptable methods for soliciting formal (greater than \$25,000) bids are:

a. Via direct mail.

b. Via facsimile transmission.

c. Via electronic mail.<sup>18</sup>

7. Collect the bids. Bid prices are considered firm for acceptance for 30 days from the bid opening date for open market purchases.<sup>19</sup>

8. Tabulate the bids and select the vendor who provides best value to the State.<sup>20</sup> Include the following information in your tabulation:

a. Vendors contacted, including those who did not respond.

b. For HUBs, the ethnicity/gender of the CPA Certified HUB.

c. Agents contacted and their telephone numbers, email addresses, etc.

d. Bid amounts and no-bids.

e. Awarded vendor.

f. Statement of reasons for award.<sup>21</sup>

9. Keep a record of all open market bids. Make open market bid tabulations open for public inspection, and retain the tabulation of the bids for inspection by the state auditor or the auditor's representative.<sup>22</sup>

10. Issue a PO and make the award by obtaining the signature of your agency's director or their designee as reflected in your agency's Procurement Plan.<sup>23</sup> Keep a record of all open market orders.<sup>24</sup>

## CPA Administered Open Market Purchase

CPA Administered Open Market Purchase is used for CPA-administered open market purchases. See Section 2.4, Selecting a Procurement Method, to determine whether this process is appropriate for a given purchase

1. Complete an [Open Market Requisition Form](#) or your agency's equivalent to this form. A sample form is located in the [Procurement Forms Library](#).<sup>25</sup> Be certain to include:

- a. Billing and shipping addresses. Use [Agency Invoice and Destination Codes](#), if available.
- b. Texas Department of Transportation Highway district. See the CPA [Counties in Texas Highway Districts](#)<sup>26</sup> webpage for a list.
- c. Requisition number.
- d. Requisition date.
- e. Estimated total dollar value.
- f. [NIGP \(National Institute of Public Purchasing\) commodity class and item number\(s\)](#). Multiple items may be designated on the same requisition.
- g. Abbreviated item or service description.
- h. Quantity and unit of measure.
- i. Detailed specification.
- j. CPA standard open market clauses. See the CPA [Procurement Related Information](#)<sup>27</sup> webpage for a list of clauses.
- k. Clauses specific to or required by your agency.
- l. HUB Subcontracting opportunities, as appropriate. See Section 2.28, Historically Underutilized Business Program, for details.
- m. Any additional information applicable to the purchase.
- n. Authorized signature.



2. If you wish to review the bids before award, include written notification that you wish to review the bids on the Open Market Requisition.
3. Submit the completed [Open Market Requisition Form](#) to CPA on-line, via email, via fax, via direct mail, or in person. The average CPA processing time for an open market requisition is approximately 45 calendar days. This may vary depending on the nature of the purchase.
4. The appropriate CPA Purchaser reviews the requisition and communicates any suggested changes to your agency within approximately 14 days of receipt of the requisition. If the CPA Purchaser suggests changes, work with the Purchaser to resolve discrepancies.
5. If your [Open Market Requisition](#) is for a service with an estimated purchase price over \$100,000, and the CPA Purchaser determines that there is no competitive advantage to CPA administering the competitive process, they will delegate the authority to make the purchase to your agency. If CPA delegates the open market service purchase to your agency, procure the service using the **Open Market Formal Solicitation Process** subheading above.
6. The CPA Purchaser creates an IFB (Invitation for Bid) for the commodity and posts the solicitation to the [ESBD](#) (Electronic State Business Daily). Review the [ESBD](#) posting and promptly submit any corrections to the CPA Purchaser in writing. The CPA Purchaser integrates any corrections into the IFB with an addendum. Addendums are also reflected on the [ESBD](#).
7. CPA collects bids.
8. CPA conducts a public open market bid opening. CPA will also accept requests for bid readings.
9. CPA tabulates the bids and posts the results to the [CPA Open Market Bid Tabulations](#)<sup>28</sup> webpage. Bid tabulations remain on CPA's website until the end of the following FY (fiscal year). For example, a bid tabulation posted in FY 04 remains on CPA's website until the end of FY 05.
10. If requested (see Step 2), the CPA Purchaser:
  - a. Completes a Purchasing Referral Letter, which is used to communicate the CPA Purchaser's recommendation for award and funds inquiries.

b. Provides a copy of the entire bid package, including the Purchasing Referral Letter, to your agency for review before making an award.

If the vendor your agency would select based on the best value criteria outlined in statute differs from CPA's best value award, promptly send written justification for a different award to the CPA Purchaser, along with the Purchasing Referral Letter. The commission shall consider, but is not bound by, your agency's recommendation in making the award.

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11. If the best value bid, as determined by CPA, will exceed the estimated purchase price listed on your [Open Market Requisition Form](#) by 10% or more, the CPA Purchaser will indicate this on the Purchasing Referral Letter and request written confirmation that your agency has the funds to honor the award. In this case, return the completed Purchasing Referral Letter along with either a confirmation letter or a cancellation letter to the CPA Purchaser. If your agency has the funds to honor the award, continue Step 12; Otherwise, the CPA Purchaser cancels the requisition and does not make an award.

12. CPA Purchaser issues a PO and makes the award by obtaining the signature of CPA's Statewide Procurement Manager.

13. CPA sends a copy of the PO to your agency and to the awarded vendor.

14. CPA posts the award to the [CPA Open Market Awards](#) <sup>30</sup> webpage.

## **Endnotes**

- <sup>1</sup> [Texas Administrative Code, Title 34, Part 1, Chapter 20, Rule 20.32](#)
- <sup>2</sup> [Texas Government Code 2155, Subchapter D, Section 2155.322](#)
- <sup>3</sup> [Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.41](#)
- <sup>4</sup> [Texas Government Code 2156, Subchapter B, Section 2156.062](#)
- <sup>5</sup> [Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.34](#)
- <sup>6</sup> [Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.41](#)
- <sup>7</sup> [Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.36](#)
- <sup>8</sup> [Texas Government Code 2156, Title 10, Subtitle D, Section 2156.063](#)
- <sup>9</sup> [Texas Government Code 2156, Subchapter B, Section 2156.062](#)
- <sup>10</sup> [Texas Government Code 2156, Subchapter B, Section 2156.066](#)
- <sup>11</sup> [Texas Government Code 2156, Subchapter B, Section 2156.064](#)
- <sup>12</sup> [Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.36](#)
- <sup>13</sup> [http://www.window.state.tx.us/procurement/tools/proc\\_forms/index.html](http://www.window.state.tx.us/procurement/tools/proc_forms/index.html)
- <sup>14</sup> [Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.41](#)
- <sup>15</sup> [Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.41](#)

- <sup>16</sup> Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.34
- <sup>17</sup> Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.41
- <sup>18</sup> Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.36
- <sup>19</sup> Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.36
- <sup>20</sup> Texas Government Code 2156, Subchapter B, Section 2156.062
- <sup>21</sup> Texas Government Code 2156, Subchapter B, Section 2156.066
- <sup>22</sup> Texas Government Code 2156, Subchapter B, Section 2156.064
- <sup>23</sup> Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.36
- <sup>24</sup> Texas Government Code 2156, Subchapter B, Section 2156.064
- <sup>25</sup> [http://www.window.state.tx.us/procurement/tools/proc\\_forms/index.html](http://www.window.state.tx.us/procurement/tools/proc_forms/index.html)
- <sup>26</sup> [http://www.window.state.tx.us/bid\\_districts.html](http://www.window.state.tx.us/bid_districts.html)
- <sup>27</sup> [ftp://ftp.cpa.state.tx.us/pub/misc/om\\_clause.p01](ftp://ftp.cpa.state.tx.us/pub/misc/om_clause.p01)
- <sup>28</sup> <http://www.window.state.tx.us/tabs/>
- <sup>29</sup> Texas Government Code 2156, Subchapter B, Section 2156.065
- <sup>30</sup> <http://www.window.state.tx.us/reqs/>

## Section 2.8

Revised: 11/13/07

# Scheduled Purchase Contracts

## **Introduction**

A Scheduled Purchase Contract is a CPA method for purchasing commodities in bulk. Texas Government Code Chapter 2155.064, Subchapter B, legally authorizes Scheduled Purchase Contracts. A Scheduled Purchase Contract must:

- Be a high-volume purchase.
- Be for a definite, known quantity of a commodity.
- Be delivered on a definite, known schedule.

Scheduled Purchase Contracts differ from Term Contracts in several ways. First, Scheduled Purchase Contracts are for a definite, known quantity of a commodity and Term Contracts are not. Second, Scheduled Purchase Contracts require a known, definite delivery schedule and Term Contracts do not. Finally Scheduled Purchase Contracts are a commitment to purchase a commodity and Term Contracts are not.

## **Procedures**

### ***New Scheduled Purchase Contracts***

If you require a new Scheduled Purchase Contract, notify the CPA Purchaser responsible for the commodity. The CPA purchaser will evaluate the requirement and notify you if it is appropriate for a Scheduled Purchase Contract. If the CPA Purchaser approves your requirement for a Scheduled Purchase Contract, follow the Existing Scheduled Purchase Contracts procedure below. If the CPA Purchaser does not decide that your purchase is appropriate for a Scheduled Purchase Contract, make your purchase using one of the other approved purchasing methods.

### ***Existing Scheduled Purchase Contracts***

#### **Procedure**

If your agency wishes to participate in the Scheduled Purchase Contract, but has never done so, notify the CPA Purchaser responsible for the Contract. The Scheduled Purchase Contract procedure for participating agencies is:

1. CPA notifies your agency by sending a partially completed requisition for the Scheduled Purchase approximately six months in advance.
2. Complete the requisition and submit it to the CPA Purchaser by the deadline listed on the requisition.
3. The CPA Purchaser:

- a. Consolidates the requisitions into a single requisition.
- b. Chooses the appropriate solicitation method for the requisition.
- c. Advertises the solicitation.
- d. Collects the responses to the solicitation.
- e. Evaluates the responses to the solicitation.
- f. Makes an award.

4. Your agency is now required to purchase from the Scheduled Purchase Contract.

5. Obtain approval from the CPA Purchaser to change the quantities purchased on the schedule unless otherwise specified in the terms and conditions of the Scheduled Purchase Contract.

### **Current Scheduled Purchase Contracts**

The following is a list of currently offered Scheduled Purchases Contracts:

<u>Item</u>	<u>Class</u>	<u>Frequency</u>	<u>Time Period</u>	<u>Purchaser</u>
Fertilizer	335	Bi- Annually	02/01 - 02/28 05/01 - 05/31	A
Bread & Pastry	375	Annually	09/01 - 08/31	C
School Bread & Pastry	375	Annually	08/01 - 07/31	C
TDCJ Bread & Pastry	375	Annually	09/01 - 08/31	C
Milk & Dairy/ Ice Cream	380	Annually	03/01 - 02/28	C
School Milk & Dairy/Ice Cream	380	Annually	08/01 - 07/31	C
TDCJ Milk & Dairy	380	Annually	09/01 - 08/31	C

### **Section 2.9**

**Revised: 05/04**

# Texas Multiple Award Schedule Contracts

## PCC X

### **Introduction**

The TXMAS (Texas Multiple Award Schedule) Program adapts existing competitively awarded government contracts to the procurement needs of the State of Texas. Unlike some other purchasing methods, purchases made from TXMAS contracts do not require delegated authority from the CPA to make purchases over \$25,000 for commodities and \$100,000 for services. To be considered for the TXMAS Program, an existing contract must be:

1. Awarded by the federal government or any other governmental entity in any state.
2. Awarded using a competitive process.
3. Adaptable to the laws of the State of Texas.<sup>1</sup>

Each TXMAS contractor is required to produce a TXMAS vendor catalog. Vendor catalogs contain the information needed to place order:

- Item specifications.
  - Ordering procedures.
  - Invoicing procedures.
  - Contact information for making purchases and for customer service.
- Terms and Conditions: If any information is needed in reference to the Terms and Conditions, please contact the contract holder or the TXMAS Coordinator at (512) 463-3421.

Vendor catalogs are available on the [TXMAS Contracts By Schedule](#).<sup>2</sup>

### **GSA (General Services Administration) Contracts**

The vast majority of TXMAS Contracts are adapted from GSA (General Services Administration) Federal Supply Service contracts. For this reason, it is common for a vendor's TXMAS catalog to be nearly identical to its GSA catalog. For contracts adapted from GSA contracts, the TXMAS prices must be identical to those on the GSA Schedule. These are the MFC (most favored customer) prices and are the maximum prices allowed.<sup>3</sup>

For information regarding negotiating lower prices for TXMAS contract items, see subheading **Negotiating Price with TXMAS Vendors**.

## Purchasing from Existing TXMAS Contracts

### **TXMAS Purchases \$5,000 and Below**

1. Consider purchasing the product or service from the TIBH (Texas Industries for the Blind and Handicapped) or TCI (Texas Correctional Industries) catalogs in accordance with applicable statutes. See Section 2.5, “Special Purchases for TIBH and TDCJ/TCI,” for more information.
2. Issue a PO to the selected TXMAS contractor using your agency’s procedures for purchases \$5,000 and below.

### **TXMAS Purchases Over \$5,000**

1. Consider purchasing the product or service from the TIBH (Texas Industries for the Blind and Handicapped) or TCI (Texas Correctional Industries) catalogs in accordance with applicable statutes. See Section 2.5, “Special Purchases for TIBH and TDCJ/TCI,” for more information.
2. If the product or service is available from a CPA Term Contract, record the price for your best value evaluation.
3. Search the [TXMAS Contracts Web Page](#)<sup>4</sup> for the required product or service. If you are working with a new TXMAS contractor who does not yet have a listing on the [TXMAS Contracts Web Page](#), send a request to that vendor for a catalog. Vendors who are within their 15-day grace period for establishing a TXMAS Web Page are responsible for sending their catalog(s) to you upon request.
4. Obtain a price quote from as many TXMAS vendors as are necessary to provide best value to the State. Document all price quotes in your purchasing file. If the TXMAS contractor’s website is not shown on the [TXMAS Contracts Web Page](#), they must include a copy of the TXMAS contract award notice with their price quote.
5. File each price quote in the PO file. If no TXMAS vendors provide the product or service, go to subheading Proposing New TXMAS Contracts
6. Evaluate the quote(s) for best value. If the product or service is available from a CPA Term Contract and provides the best value, purchase from the CPA Term Contract.
7. Compare the best value quote with the price listed in the selected vendor’s TXMAS catalog. If the quoted price is equal to or less than the price listed in the vendor’s TXMAS catalog, make a note that you verified the price in your purchasing records. If the quoted price is higher than the price listed on the vendor’s TXMAS catalog, have the vendor generate a price quote that is consistent with their TXMAS pricing. Once the price has been corrected, note that you verified and then corrected the price in your purchasing records.

8. The TXMAS contractor is not required to accept orders below the minimum order limit shown on the contract page. Orders between the minimum and maximum order limits listed on the contract page are subject to TXMAS catalog pricing. For orders above the maximum limit, you are entitled to negotiate lower prices than those listed in the TXMAS catalog. See subheading **Negotiating Price with TXMAS Vendors** below for more information.

9. Document the basis for the best value determination in the PO file. Incidental, off-schedule items and services, installation or inside delivery and set up, may be purchased as "best value, open market" items provided that they are necessary for product warranty, system integration or product completeness. Your agency is responsible for ensuring that the quoted price for such incidental items is fair and reasonable. See subheading **Negotiating Price with TXMAS Vendors** below for more information. These incidental items and services may be added to the TXMAS purchase order if they are clearly labeled as "open market, best value" items.

10. Prepare a PO containing the following:

- a. The TXMAS Contract number.
- b. An NIGP Code for each purchased line item.

11. Send the PO directly to the TXMAS vendor listed on the TXMAS contract page.

12. Enter the PO into CPA's on-line purchasing system, Impala, or fax a copy of the PO to CPA at 512-475-0708.

13. If the PO exceeds \$25,000, post the Award Notice on the ESBD (Electronic State Business Daily).

### **TXMAS Proprietary Purchases**

1. Search the [TXMAS Contracts Web page<sup>6</sup>](#) for the required product or service.

2. If you find the proprietary product or service you need on a TXMAS Contract, prepare a letter justifying the proprietary purchase and obtain the appropriate procurement manager's signature. Retain this document in the PO file.

3. Prepare a PO containing the following:

- a. The TXMAS Contract number.
- b. An NIGP Code for each purchased line item.

4. Send the PO directly to the TXMAS Vendor.

5. Enter PO into CPA's on-line purchasing system, Impala, or fax a copy of the PO to



CPA at 512-475-0708.

6. If the PO exceeds \$25,000, post the Award Notice on the ESBD (Electronic State Business Daily).

### **Negotiating Price with TXMAS Vendors**

You may negotiate with a TXMAS vendor on the price of:

- Incidental, non-TXMAS contract items and services, installations or inside deliveries and set ups that are required to facilitate TXMAS contract purchases.
- TXMAS contract goods and services that the vendor is offering through a promotional program.
- TXMAS contract goods and services in an amount that exceeds the contract's Maximum Order.

### **Proposing New TXMAS Contracts**

If you have a requirement that could be met by a competitively awarded government contract:

1. Verify that the requested contract is not already available as a TXMAS Contract.
2. Verify that the contract is:
  - a. Awarded by the federal government or any governmental entity of any state.
  - b. Awarded using a competitive process.
  - c. Adaptable to the laws of the State of Texas.<sup>7</sup>
3. If the potential contract meets the above criteria, contact the TXMAS Program at (512) 463-3421 to begin the process for awarding a TXMAS contract/

<sup>1</sup> Texas Government Code Title 10, Subtitle D, Sections [2155.062](#), [2155.502](#), [2155.504](#)

<sup>2</sup> [http://portal.cpa.state.tx.us/txmas/txmas\\_index.asp](http://portal.cpa.state.tx.us/txmas/txmas_index.asp)

<sup>3</sup> Texas Government Code Title 10, Subtitle D, Section [2155.504\(b\)](#) and Local Government Code Section [271.101](#)

<sup>4</sup> [http://portal.cpa.state.tx.us/txmas/txmas\\_index.asp](http://portal.cpa.state.tx.us/txmas/txmas_index.asp)

<sup>5</sup> Texas Government Code Title 10, Subchapter I, Section [2155.507](#)

<sup>6</sup> [http://portal.cpa.state.tx.us/txmas/txmas\\_index.asp](http://portal.cpa.state.tx.us/txmas/txmas_index.asp)

<sup>7</sup> Texas Government Code Title 10, Subtitle D, Sections [2155.062](#), [2155.502](#), [2155.504](#)

Revised 09/26/06  
Section 2.9.1

## **Request For Proposal (RFP)**

In accordance with Texas Government Code, Title 10, Subtitle D, Section [2156.121](#) the CPA is authorized to determine whether to delegate sole oversight of the use of the Competitive Sealed Proposal or Request for Proposal (RFP) method of procurement to a state agency or to retain oversight of such procurement. A Request For Proposal (RFP) is a written request for proposals concerning goods or services the state intends to acquire by means of the competitive sealed proposal procedure. This procedure is similar to the open market procurement process; however, instead of sealed competitive bids, a negotiation phase is included and a best and final offer is permitted.

Specific guidelines concerning documentation, procedures, and handling requirements for using the competitive sealed proposal procedures are addressed in the Texas Comptroller of Public Accounts (CPA) [Contract Management Guide](#). Texas Government Code, Title 10, Subtitle D, Sections [2156.121 - 2156.125](#), [2157.121 - 2157.125](#), and the CPA Contract Management Guide should be reviewed before submitting the RFP to the CPA's Procurement Operations and Customer Service Division.

### **Legal Sources:**

[Texas Government Code, Title 10, Subtitle D, Sections 2156.121-2156.125](#)

[Texas Government Code, Title 10, Subtitle D, Sections 2157.121-2157.125](#)

Click on this link to view the [Contract Management Guide](#).

SECTION 2.10

REVISED DATE: 11/09/06

# Delegated Purchase Procedure

## Introduction

A **delegated purchase** is a procurement in which the authority to manage the competitive process is delegated to an agency by CPA Rule or by statutory exemption. The delegated purchase procedure does not apply to mandatory State use purchasing programs or requirements that can be satisfied by other purchasing methods specifically authorized by state statutes. Follow the instructions in *Section 2.4 Selecting the Procurement Method* to be certain that your agency granted the authority to use the Delegated Purchase Procedure. *See Section 1.1 Training and Certification* for certification requirements for making purchases. Agencies are responsible for establishing procedures for responding to delegated purchase complaints and protests. *See Section 4.2 Procurement Plan* for more information.

## Procedure for Delegated Purchases

1. Verify that your agency has been delegated authority over the competitive process by CPA or State statute. Follow the instructions in *Section 2.4 Selecting the Procurement Method* to make this determination.

2. Collect the following:

- The detailed specification or SOW for the required product or service. *See Section 2.0 Identify End User Needs* for more information on specifications.
- A reasonable estimate of the good or service's purchase price based on a market survey, a catalog price comparison or a previous purchase of the same specification. Please note that the solicitation and award authority of an individual purchaser is limited to dollar amounts corresponding to their state purchasing certification. *See Section 1.1 Training and Certification* for more information.

3. If the estimated purchase price is \$5,000 or less, statute does not require a competitive award.<sup>1</sup> Follow your agency's procedures for procuring commodities or services in an amount of \$5,000 or less.

4. If the specification or SOW is for:

- a. **Printing**, see Section 2.21.3 Printing for instructions.
- b. Internal repair, follow the instructions under subheading **Internal Repair Purchases** on page 10.
- c. A service, follow the instructions under subheading **Service Delegated Purchases** on page 3.
- d. Perishable items, follow the instructions under subheading **Perishable Goods Purchases** (PCC L) on page 4.

- e. A publication directly from the publisher, follow the instructions under subheading **Direct Publication Purchases (PCC K)** on page 5.
  - f. Fuel, oil or grease, follow the instructions under subheading **Fuel, Oil, and Grease Purchases (PCC P)** on page 6.
  - g. A distributor purchase, follow the instructions under subheading **Distributor Purchases (PCC M)** on page 8.
5. Otherwise, follow the procedure under subheading **Commodity Delegated Purchases** below.

### **Commodity Delegated Purchases**

A commodity purchase is a procurement of supplies, materials, or equipment and does not include the purchase of real property or services. CPA delegates to all state agencies the authority to purchase commodities whose estimated purchase price does not exceed \$25,000.<sup>2</sup>

#### ***Commodity Delegated Purchase Procedure***

Purchase the commodity using the Open Market Informal Solicitation process.<sup>3</sup> See *Section 2.8 Open Market Purchases* for more information on this process.

### **Service Delegated Purchases**

A **service** is defined as the furnishing of skilled or unskilled labor or professional work.<sup>4</sup> Delegated purchases of services do not include:

- Professional and consulting services covered by the Professional Services Act as defined by Texas Government Code, Title 10, Subtitle D, *Section 2254*. See *Section 2.20 Professional and Consulting Services* for more information.
- Services of an employee of a state agency.
- Services of public utilities.

#### ***Service Delegated Purchase Procedure***

If the estimated purchase price is:

1. Less than or equal to \$25,000, purchase the service using the Open Market Informal Solicitation Process.<sup>5</sup>

See *Section 2.8 Open Market Purchases* for more information on this process.

2. Greater than \$25,000 and less than or equal to \$100,000:

- a. Post the solicitation information to the ESBD (Electronic State Business Daily). See *Section 2.31 Electronic State Business Daily (ESBD)* for more information.

b. Payment for services over \$25,000 per year is subject to pre-payment audit by CPA Procurement Audit.<sup>6</sup> Solicit vendors and make and award using an appropriate formal competitive process.<sup>7</sup>

c. Send the appropriate procurement documentation to CPA Procurement Audit. See *Section 3.1 Pre-Procurement and Pre-Payment Audits* for more information.

3. Greater than \$100,000, the authority to procure services is not automatically delegated to your agency. If you have not done so, submit a requisition for these services according to *Section 2.8 Open Market Purchases*, subheading ***CPA Administered Open Market Purchase***. If CPA delegates the authority to procure a service for which the estimated purchase price exceeds \$100,000 to your agency:

a. Include the letter delegating procurement authority in your procurement file.

b. Make any changes required by CPA to the advertised specifications, terms, and conditions.

c. Post the solicitation information to the ESBD (Electronic State Business Daily). See Section 2.31 Electronic State Business Daily (ESBD) for more information.

d. Solicit vendors and make and award using an appropriate formal competitive process.<sup>8</sup>

e. Because payments over \$100,000 are pre-payment audited, send the appropriate procurement documentation to CPA Procurement Audit for pre-payment audit.<sup>9</sup> CPA will conduct a subsequent review of the solicitation. The result of this audit may affect whether future procurements of this type will be delegated to your agency. See *Section 3.1 Pre-Procurement and Pre-Payment Audits* for more information

## Perishable Goods Purchases (PCC L)

Perishables goods are goods that are subject to spoilage within a relatively short time.<sup>10</sup> CPA has delegated authority to state agencies to purchase perishable goods. Perishable goods include, but are not limited to:

Description	Class
Eggs, Fresh	390-21
Fruits, Fresh	390-28
Ice	390-35
Ice, Dry	390-42
Meat: Cured, Fresh, Frozen	390-49
Poultry, Dressed, Fresh	390-63
Seafood, Fresh	390-70
Shellfish, Fresh	390-72
Tamales, Fresh	390-77
Tortillas, Fresh	375-60
Vegetables, Fresh	390-84

### *Perishable Goods Purchase Procedure*

- 1.If the estimated purchase price is greater than \$25,000 go to Step 3.
- 2.Purchase the item using the Open Market Informal Solicitation Process.<sup>11</sup> See *Section 2.8 Open Market Purchases* for more information on this process.
- 3.Post the solicitation information to the ESBD (Electronic State Business Daily).<sup>12</sup> See *Section 2.31 Electronic State Business Daily (ESBD)* for more information.
- 4.Solicit vendors and make and award using an appropriate formal competitive process.

## **Direct Publication Purchases (PCC K)**

Direct publications are publications only available from a single source. Any publication that could be purchased using a competitive process is not considered a direct publication.<sup>13</sup> For example, publications that are available through subscription services are not direct publications. Examples of direct publications include, but are not limited to:

- Subscriptions only available directly from the publisher.
- Foreign publications.
- Back issues of magazines, journals, and newspapers.
- Publications produced by professional societies.
- Audio, visual or audiovisual materials (films, audio presentations, etc.) that are only available directly from the publisher.
- Computer software and software maintenance which is only available directly from the publisher.
- Electronic data service directly from the publisher (not to be confused with internet service providers such as Earthlink or America On-line, which are not direct publications).
- Collections of any of the foregoing items, including microfilm or microfiche copies of the collection.
- Library of Congress cards.
- Theses, dissertations, research findings and academic publications.

### ***Direct Publication Purchase Procedure***

1. If the estimated purchase price is greater than \$25,000, post the solicitation information to the ESBD (Electronic State Business Daily). See *Section 2.31 Electronic State Business Daily (ESBD)* for more information.
2. Include a signed document in the procurement file that contains the following declaration: "**Not available from any other source.**" Acceptable documents include but are not limited to:
  - a. A signed memorandum with the above statement.
  - b. The PO with the above signed statement.
3. Purchase the publication directly from the sole vendor that publishes it.

## Fuel, Oil, and Grease Purchases (PCC P)

Fuel, oil, and grease purchases include gasoline, diesel fuel, kerosene, aviation fuels, transmission fluids, motor oil and other lubricants, liquefied petroleum gas (LPG), and compressed natural gas (CNG). These commodities may be purchased in either bulk or packaged form.

### *Lubricants*

The solicitation and award of lubricants should be based on firm-fixed prices or a discount from a manufacturer's published list price.

### *Indexed Fuel Pricing*

Because fuel prices fluctuate, construct bulk fuel solicitations using indexed pricing based on the vendor's terminal price. The **posted terminal price** is the vendor's cost per gallon for the fuel from the refiner's depot. The posted terminal price for a contract may be either:

- The vendor's actual cost, as shown on fuel receipts.
- A standard industry quote such as OPIS (Oil Price Information Service).
- DTNergy (Data Transmission Network).
- A current index price from [The Federal Department of Energy, Energy Information Administration](#).<sup>14</sup>

The **vendor's constant** is the difference between the posted terminal price per gallon and the selling price per gallon. The constant includes applicable taxes, environmental fees, freight charges, load fees, operational overhead, and vendor's profit margin. In your terms and conditions, prohibit vendors from changing the constant during the term of the contract. To get the actual cost of the fuel, add the vendor's constant price to the terminal price:



**Example:**      \$1.10/gallon Posted Terminal Price

+ \$0.24/gallon Vendors Constant

\$1.34/gallon Selling price

### ***Fuel, Oil, and Grease Purchase Procedure***

1. If the specification is for:
  - a. **Service station delivery**, purchase using a CCG Voyager card issued under CCG contract 03-1172THS. Service station deliveries are amounts of fuel, oil or grease required for continued operation of a motor vehicle. Some examples of service station delivery goods are pump-delivered gasoline, pump-delivered diesel fuel, and less than case lots of oil or other fluids. Code the payment as document type 9 and reference CCG contract number 03-1172THS in USAS.
  - b. Alternative vehicle fuels, consider using CPA Term Contract [405-A1 Retail Purchase Of Alternative Fuel \(LPG\) and \(CNG\)](#)<sup>15</sup> for alternative fuels. Contract 405-A1 is a retail point of sale contract provided for convenience and its use is not mandatory. CPA maintains an alternate fuels price information line at 512-475-2657. See the text of CPA Term Contract 405-A1 for more information.
  - c. An open market blanket purchase order for bulk fuel, make certain that the solicitation contains the following information:
    - i. The term of the contract, including beginning and ending dates.
    - ii. Estimated total quantities to be purchased during the contract term.
    - iii. Estimated frequency and quantity for each delivery.
    - iv. The delivery destination or destinations.
    - v. Storage capacity of the agency's tank or tanks
    - vi. Any requirements for vendor-provided storage tanks.
    - vii. A statement that the state is exempt from federal fuels excise tax.

2. If the estimated purchase price is greater than \$25,000 go to Step 4.
3. Purchase the fuel using the Open Market Informal Solicitation Process.<sup>16</sup> See *Section 2.8 Open Market Purchases, Subheading Open Market Informal Solicitation* for more information on this process.
4. Post the solicitation information to the ESBD (Electronic State Business Daily).<sup>17</sup> See *Section 2.31 Electronic State Business Daily (ESBD)* for more information.
5. Solicit vendors and make and award using an appropriate formal competitive process.

### **Distributor Purchases (PCC M)**

A **distributor purchase** is the purchase of repair parts for a unit of major equipment that are needed immediately or as maintenance contracts for laboratory/medical equipment. Examples of major equipment include, but are not limited to, the following:

- Motor vehicles.
- Farm tractors and equipment.
- Road building machinery and equipment.
- Heavy construction machinery and equipment.
- Traffic signal lights or traffic signal controller equipment.
- Intelligent Transportation Systems (ITS).
- Laboratory or medical equipment.
- Industrial Manufacturing Machinery.

Repair parts do not include complete components such as engines, transmissions, compressors, etc. Parts purchased on a distributor purchase order can only be purchased from a dealer or distributor of the unit being repaired. However, when a unit of equipment has a major component made by another manufacturer, such as a Ford truck using a Caterpillar engine, the component repair parts can be purchased from a dealer or distributor of the component being repaired. Verify that the installation of distributor parts will not void the equipment's warranty before proceeding with this type of procurement.

The following items are not distributor purchases:

- Parts available on CPA Term Contract.

- Consumable items such as brake pads, air filters, etc.
- Labor of any kind.
- Non-Original Equipment Manufacturer (OEM) parts, i.e. after market items.
- Major component replacements.
- Parts for stock.
- Electrical parts for electric motors, electrical switch panel boards, or electrical accessories, etc.

### **Purchase Procedure for Distributor Purchase**

1. If the distributor part is only available from one source, use the proprietary purchase method to purchase the part. See Section 2.21 Proprietary Purchases for more information.
2. If the estimated purchase price is greater than \$25,000, go to Step 4.
3. Purchase the item using the Open Market Informal Solicitation Process.<sup>19</sup> See *Section 2.8 Open Market Purchases, Subheading Open Market Informal Solicitation* for more information on this process.
4. Post the solicitation or award information to the ESBD (Electronic State Business Daily) as appropriate. See Section 2.31 Electronic State Business Daily (ESBD) for more information.
5. If multiple dealers are available, soliciting vendors and making an award using a formal competitive process is strongly encouraged.

## **Internal Repair Purchases**

An internal repair is a repair to state-owned equipment that cannot be reasonably defined prior to the actual repair and the extent of which can not be determined until the equipment is disassembled.<sup>20</sup> Furthermore, internal repairs are usually the result of an unexpected, basic service outage. For example, the unexpected failure of a building's air conditioner may result in unanticipated repair to electrical circuitry, which would constitute an internal repair. Internal repairs must contain labor and may also include parts.

### **Internal Repair Purchase Procedure**

1. Annotate your procurement documentation with "Internal Repair".
2. To limit agency liability, include the following on the purchase order:

“Not to exceed {insert reasonable dollar limit} for repair services unless prior authorization is provided by the agency.”

3. If the estimated purchase price is greater than \$25,000, post the solicitation or award information to the ESBD (Electronic State Business Daily) as appropriate. *See Section 2.31 Electronic State Business Daily (ESBD)* for more information.
4. Competitive award is not required for an internal repair. Follow your agency's procedures for procuring an internal repair.

## **Purchase of Information Technology Commodities and Services**

Information Technology Commodities and Services include commercial software, hardware, or technology services, other than telecommunications services, that are generally available to businesses or the public, including seat management, through which a state agency transfers its personal computer equipment and service responsibilities to a private vendor to manage the personal computing needs for each desktop in the state agency, including all necessary hardware, software, and support services, per Government Code § 2157.068

### *Request for Offers (RFO) Purchasing Method*

The Request for Offer (RFO) purchasing method is intended as the designated, primary purchasing method for procuring IT commodities and services other than under the Department of Information Resources' (DIR) IT commodity program. However state agencies, institutions of higher education, or local governments may choose to use the request for offers purchase method described below or any other purchasing method authorized by Government Code, Title 10, Subtitle D, that will obtain best value.

The RFO method may be used in three instances under applicable law:

1. Unavailability of the IT commodity or service under DIR's IT commodity purchasing program
2. The agency has obtained an exemption from DIR or approval from the Legislative Budget Board under Government Code § 2157.063 Subsection (f); or
3. The agency is otherwise exempt from Government Code § 2157.068.

### *RFO Procedures*

The RFO purchasing procedures follow the same procedures listed in Section 2.8 (Centralized Master Bidders List) for IFB solicitation and award.

### *Proprietary Purchases of IT Commodities and Services*

See section 2.21 for the proprietary purchasing procedure. In addition to following the proprietary purchasing procedure found in Section 2.21, entities must follow the guidelines listed below.

If the procuring entity believes that the good or service may be proprietary to one vendor, then that entity shall include the following statement in bold and in prominent type at the beginning of the RFO: "The issuing office believes that the request items in this request for offers may be proprietary to one vendor under Government Code 2155.067; however the issuing office strongly encourages offers from all qualified respondents that may be able to provide the requested items."

## Summary of Minimum Requirements for Delegated Purchases

COMPETITIVE	Total Amount of Purchase Order	Commodity Purchases (See Page 2)	Purchases of Services (See Page 2)	Direct Publication Purchases (See Page 5)	Perishable Goods Purchases (See Page 4)	Distributor Purchases (See Page 8)	Fuel, Oil and Grease Purchases (See Page 6)	Emergency Purchases (See Section 2.18)
	\$0.00 to \$5,000.00	Competitive Process Not Required PCC E	Competitive Process Not Required PCC E	Competitive Process Not Required PCC K	Competitive Process Not Required PCC L	Competitive Process Not Required PCC M	Competitive Process Not Required PCC P	Competitive Process Not Required PCC E
	\$5,000.01 to \$25,000.00	Open Market Informal Solicitation PCC F	Open Market Informal Solicitation PCC Q	Direct Publication Declaration with Purchasing Documentation PCC K	Open Market Informal Solicitation PCC L	Open Market Informal Solicitation if Multiple Dealers Available PCC M	Open Market Informal Solicitation PCC P	Open Market Informal Solicitation PCC-Q
	\$25,000.01 to \$100,000.00	Non-delegated	Open Market Formal Solicitation PCC S	Direct Publication Declaration with Purchasing Documentation PCC K	Open Market Formal Solicitation PCC L	Open Market Formal Solicitation Encouraged if Multiple Dealers Available PCC M	Open Market Formal Solicitation PCC P	Open Market Formal Solicitation When Possible PCC T
	Over \$100,000.00	Non-delegated	May or May Not be Delegated PCC S	Direct Publication Declaration with Purchasing Documentation PCC K	Open Market Formal Solicitation PCC L	Open Market Formal Solicitation Encouraged if Multiple Dealers Available PCC M	Open Market Formal Solicitation PCC P	Open Market Formal Solicitation When Possible PCC T

- <sup>1</sup>[Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter A, Rule 20.41](#)
- <sup>2</sup>[Texas Government Code, Title 10, Subtitle D, Section 2155.131; Texas Administrative Code, Title 34, Part 1, Chapter 20, Section 20.41.](#)
- [Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter A, Rule 20.41](#)
- <sup>4</sup>[Texas Government Code, Title 10, Subtitle E, Section 2155.321\(3\)](#)
- <sup>5</sup>[Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter A, Rule 20.41](#)
- <sup>6</sup>[Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter A, Rule 20.41](#)
- <sup>7</sup>[Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter A, Rule 20.41](#)
- [Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter A, Rule 20.41](#)<sup>9</sup>[Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter A, Rule 20.41](#)
- <sup>10</sup>[Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter A, Rule 20.32](#)
- [Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter A, Rule 20.41](#)
- <sup>12</sup>[Texas Government Code Chapter 2155, Subchapter B, 2155.083](#)
- <sup>13</sup>[Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter A, Rule 20.41](#)
- <sup>14</sup>[http://tonto.eia.doe.gov/oog/info/gdu/gasdiesel.asp](#)
- <sup>15</sup>[http://www.window.state.tx.us/cat\\_page/cat\\_405\\_a1\\_0210.html](#)
- <sup>16</sup>[Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter A, Rule 20.41](#)
- <sup>17</sup>[Texas Government Code Chapter 2155, Subchapter B, 2155.083](#)
- <sup>18</sup>[Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter A, Rule 20.32](#)
- <sup>19</sup>[Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter A, Rule 20.41](#)
- [Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter A, Rule 20.209](#)

Section 2.11

Revised: 12/13/07

## **Purchase of Automated Information Systems/Telecommunication Commodities and Services**

Automated information system (AIS)/telecommunication commodities and services include:

1. the computers and computer devices on which an information system is automated, including computers and computer devices that the commission identifies in guidelines developed by the commission in consultation with the department and in accordance with Chapter 2054 and rules adopted under that chapter;
2. a service related to the automation of an information system, including computer software or computers;
3. a telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network, and all other telecommunications services.

Reference Texas Government Code §2157.001 and §2155.068

### *Request for Offers (RFO) Purchasing Method*

As authorized under hb2918 and hb3560, 80<sup>th</sup> Legislature, 2007, the RFO method is established by the Comptroller's Office by rule effective September 1, 2007. The rule is codified at 34 Tex Admin Code [§20.391](#). By definition under this rule, RFOs are open and competitive.

The Request for Offers (RFO) purchasing method is intended as the designated, primary purchasing method for procuring automated information systems/telecommunications commodities and services other than those under the Department of Information Resources' (DIR) IT commodity purchasing program. However state agencies, institutions of higher education, or local governments may choose to use the RFO purchasing method described below or any other purchasing method authorized by Government Code, Title 10, Subtitle D, that will obtain best value.

The RFO method may be used in three instances under applicable law:

4. Unavailability of the IT commodity or service under DIR's IT commodity purchasing program;
5. The agency has obtained an exemption from DIR or approval from the Legislative Budget Board under Government Code §2157.063(i); or
6. The agency is otherwise exempt from Government Code §2157.068.

If a qualified procuring entity meets the criteria for issuing an RFO, the entity may follow 34 Tex Admin Code [§20.391](#) and these procedures or may elect either the RFP, IFB or spot purchase method (depending on dollar value), all of which are under Government Code, Title 10, Subtitle D, provided that the alternative method will obtain best value.

### *RFO Procedures*

The RFO purchasing procedures for posting on the ESBD and soliciting from the CMBL are the same as those specific procedures as listed in Section 2.8 of this Manual for agency-administered and agency-awarded Open Market Purchases. As a delegated procurement, the procuring entity shall solicit, evaluate, award, negotiate and sign any contract or issue any purchase order resulting from the RFO. AIS/telecommunication commodities and services that were previously designated as Catalog Information Systems Vendor (CISV) and were repealed by HB 2918 are still delegated to state agencies to procure if not available through DIR.

### *Proprietary Purchases of AIS/Telecommunications Commodities and Services*

See Section 2.21 for the proprietary purchasing procedure. In addition to following the proprietary purchasing procedure found in Section 2.21, entities must follow the procedure listed below.

If the procuring entity believes that the good or service may be proprietary to one vendor, the entity shall include the following statement in bold and in prominent type at the beginning of the RFO:

“This solicitation is being advertised under TX. Govt’. Code, Section 2155.067.

The issuing office believes that the requested items are proprietary to one manufacturer and/or to the specifications. Only responses conforming exactly to these specifications will be considered in determining an award. The issuing office strongly encourages responses from all qualified vendors who may be able to provide the specified items.”

SECTION 2.12

UPDATED 10/23/07



# Emergency Purchases

Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practice is impracticable or contrary to the public interest an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the state.

Notwithstanding the immediate nature of an emergency all procurements conducted as emergencies should be made as competitive as possible under the circumstances. If an emergency exists a written determination of the basis for the emergency and for the selection of a particular vendor shall be included in the procurement file in accordance with this section. Emergency purchases of goods or services should not exceed the scope or duration of the emergency.

## Agency Responsibility

Comptroller of Public Accounts (CPA) has delegated to all state agencies the authority to make emergency purchases. The decision to declare an emergency purchase is the sole responsibility of the agency. Notwithstanding this delegation, emergency procurements are subject to CPA's rules and procedures. Upon request, CPA will assist in advising agencies on the proper procedures for emergency purchases, but does not certify the existence of an emergency.

## Solicitation Procedures

- At least three informal bids are encouraged whenever possible on all emergency purchases. An award should be made based on best value, considering the type of emergency. An agency is responsible for handling any complaints or protests that result from emergency procurements. See Section 2.11 General Procedures for Delegated Purchases.
- Emergency purchases over \$25,000.00 must be posted in the Electronic State Business Daily (ESBD), however, the minimum posting requirements do not apply. Posting of the advertisement and/or the award notice satisfies this requirement. See Section 2.31B Electronic State Business Daily.

## Justification Requirements

Emergency purchases require a letter of justification documenting the emergency which must be signed by the purchasing director or an authorized representative, and at a minimum address the following:

- The nature of the emergency purchase (hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state), and what caused the emergency situation; and
- The estimated impact or damage either financial or otherwise that will occur by following normal procurement practices (general statements of loss or nominal damage are not acceptable).

## Audit Requirements

Emergency purchases of goods and services over \$25,000 are pre-payment audited by CPA and should be coded as document type 3, Purchase Category Code (PCC) T.

Agencies shall retain the original documentation. To expedite the payment process, agencies must send a copy of the following purchase documents immediately after award to CPA, Procurement Audit Program, P.O. Box 13186, Austin, TX 78711.

1. Copy of signed quote, estimate, bid, or statement of work from the vendor;
2. Beginning and ending date or delivery date (estimated, if applicable);
3. Bid tabulation sheet (if applicable);
4. Emergency justification letter documenting the unforeseeable circumstances which forced the agency into an emergency procurement situation;
5. Copy of purchase order with the estimated or total dollar amount of the contract; and
6. ESBD posting of the advertisement and/or the award notice for purchases over \$25,000.

CPA strongly suggests that all agencies use the CPA terms and conditions, including bidder affirmations, for emergency procurements regardless of the dollar amount. If the informal bid process is utilized, the terms and conditions may be included by reference as part of the purchase order.

For additional information, see Section 3.0 General Audit Procedures, Section 3.1 Pre-Procurement & Payment Audits, and Section 3.2 Post-Procurement & Payment Audits.

### **Legal Authority:**

[Texas Government Code, Title 10, Subtitle D, Section 2155.137;](#)

[Texas Administrative Code, Title 34, Part 1, Chapter 20, Section 20.41](#)

[CPA Authority does not extend to purchases made under the Texas Disaster Act of 1975;](#)

[Texas Government Code, Title 4, Subtitle B, Chapter 418 et. seq.](#)

Section 2.18

Rev.5/8/03

## **Research Purchases PCC - R**

The Comptroller of Public Accounts (CPA) may delegate to institutions of higher education upon written request the authority to purchase supplies, materials, services or equipment for research projects from state funds appropriated for that purpose. The written request for delegation of research purchasing authority must be made to the Director of Procurement. Please contact the Procurement Review Section at (512) 463-3242 for a list of institutions of higher education who have requested and been granted this delegation.

An institution of higher education that has been granted delegated authority for research purchases shall follow the CPA's monetary limits and purchasing procedures regarding competitive bidding in making these type of purchases. When making these purchases the institution of higher education may consider other factors, including quality, reliability, expected life span, and compatibility with existing equipment.

The following declaration must be on the purchase document:

**"This purchase complies with the statutes and all TAC rules and procedures pertaining to the delegation of research purchasing authority."**

The appropriate delegated bidding procedure is to be used in accordance with the dollar amount to be purchased (see matrix in Section 2.11 General Procedures). The institution of higher education will have the responsibility for handling complaints and protests. Purchases will be made in accordance with the statutes, CPA rules and procedures, except there is no upper dollar limit.

All research purchases made through the research delegated authority over \$25,000 are pre-audited by the CPA Procurement Review Section. Institution of higher education must send the purchasing documentation for document type 3 contracts, PCC R, to the CPA, Procurement Review Section, 1711 San Jacinto, Rm 304, Austin, TX 78701 or P.O. Box 13186, Austin, TX 78711 immediately after the date of award. This will expedite the payment approval process.

SECTION 2.19

REVISED DATE: 06/98

# Professional & Consultant Services

Texas Government Code Section [2254](#) specifically empowers governmental entities to purchase professional services and consulting services. These procurements are exempt from Comptroller of Public Accounts (CPA) review authority. Each agency is responsible for following procurement requirements and resolving any complaints or protests. CPA recommends agencies consult their legal counsel for guidance in procuring professional or consulting services. For additional detailed information, review the applicable statutes and the [State of Texas Purchase Policies and Procedures Guide](#) published by the Comptroller of Public Accounts.

## **Professional Services**

Professional services must be within the scope of practice as defined by Texas Government Code Section [2254.002](#) or provided in connection with the professional employment or practice of a person who is licensed or registered as:

1. Accounting - a certified public accountant (CPA);
2. Architecture - an architect;
3. Landscape Architecture;
4. Land Surveying - a land surveyor;
5. Medicine - a physician, including a surgeon;
6. Optometry - an optometrist;
7. Professional Engineering - a professional engineer;
8. Real Estate Appraising - a state certified/licensed real estate appraiser; or
9. Professional Nursing - registered nurse.

For information on purchasing services provided by private legal counsel, contact the Office of the Attorney General.

## **Contract Notification**

Pursuant to Texas Government Code Section [2254.006](#) and [2254.0301](#), a state agency, including an institution of higher education as defined by Section 61.003, Education Code, shall provide written notice to the Legislative Budget Board (LBB) of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$14,000. The notice must be on a form prescribed by the LBB and filed not later than the 10th day after the date the agency enters into the contract.

## **Consultant Services**

Texas Government Code defines a consultant service as the human service of studying or advising an agency under a contract that does not involve the traditional relationship of employer and employee<sup>2</sup>. An agency may contract with a private consultant only if:

- There is a substantial need for the service; and
- The agency cannot adequately perform the service with its own personnel or through another agency.

If the consulting service is reasonably foreseen to exceed \$15,000 during the term of the contract, the agency shall submit a notice of intent to the LBB and the Governor's Budget and Planning Office and obtain a finding from the Governor's office that the services are necessary. Thirty days before entering into such a contract, an

invitation for offers from consultants must be published in the Texas Register. These requirements do not apply to the acquisition of certain services such as those provided by private legal counsel, investment counselors, actuaries, medical or dental services, and professional services listed under the Professional Services Procurement Act. Not later than the 20th day after entering into a consulting services contract with a value expected to exceed \$15,000, or \$25,000 for an institution of higher education, a description of the services, the name, and value of the contract must be published in the Texas Register.

**Note:** If the professional or consulting service contract is anticipated to exceed \$25,000, a notice or the entire solicitation must also be posted on the Electronic State Business Daily. See Section 2.31 Electronic State Business Daily (ESBD)<sup>3</sup>.

### **Consulting Services Relating to the Catalog Program**

The following commodity class and item codes are identified as catalog purchases:

- Class 918-28 Computer Hardware Consulting;
- Class 918-29 Computer Software Consulting;
- Class 918-30 Computer Network Consulting;
- Class 918-46 Feasibility Studies;
- Class 918-90 Strategic Technology Planning and Consulting Services; and
- Class 918-95 Telecommunications Consulting.

New commodity class and items may be added by CPA as they are identified. Check the CPA website for a current listing of applicable class and item codes.

### **Legal Authority:**

<sup>1</sup>[Texas Government Code, Title 10, Subtitle D, Section 2254.001](#)

<sup>2</sup>[Texas Government Code, Title 10, Subtitle D, Section 2254.021](#)

<sup>3</sup>[Texas Government Code, Title 10, Subtitle D, Section 2155.083](#)

Section 2.20

Revised Date: 09/12/06

## Proprietary Purchases

A **proprietary** product or service has a distinctive characteristic that is not shared by competing products or services. When the specification limits consideration to one manufacturer, one product or one service provider, you must include a written **Proprietary Purchase Justification** in the procurement file.

Proprietary justification is not needed for purchases of \$5,000 or less. If the estimated purchase price is \$5,000 or less, there are no special requirements for a proprietary purchase. Follow the instructions in Section 2.4, Selecting a Procurement Method, **starting at Step Five**.

### **Proprietary Purchase Procedure**

#### 1. Prepare a **Proprietary Purchase Justification as Follows**:

##### a. Proprietary Justification signed by Agency Head or designee:

**“Memorandum to File”** format to be retained in Agency procurement file for:

Commodities: \$5,000 - \$25,000

Services: \$5,000 - \$100,000

**Formal Letter** addressed to CPA and included with the Open Market requisition, submitted to CPA, for:

Commodities: \$25,000 or greater

Services: \$100,000 or greater

Formal Letter to be addressed as follows:

Comptroller of Public Accounts  
Attn: Texas Procurement and Support Services (TPASS)  
P.O. Box 13186  
Austin, TX 78711

##### b. Explain the need for the proprietary specification.

##### c. State the reason competing products are not satisfactory.

##### d. If applicable, include any other information requested by CPA.<sup>1</sup>

##### e. Obtain the signature of your agency head or the presiding officer of your agency's governing body.<sup>2</sup>

#### 2. Follow the instructions in Section 2.4, Selecting a Procurement Method, **starting at Step Five**, with the following additions:

##### a. Include a copy of the **Proprietary Purchase Justification** in the procurement file.

##### b. If you submit a CPA [Open Market Requisition Form](#), include the **Proprietary Purchase Justification Letter** with the Requisition.

##### c. If you perform an Open Market Formal Purchase or a Request for Proposals (RFP), include the following statement in the specifications:

“This solicitation is being advertised under TX. Govt’. Code, Section 2155.067. The issuing office believes that the requested items are proprietary to one manufacturer and/or to the specifications. Only responses conforming exactly to these specifications will be considered in determining an award. The issuing office strongly encourages responses from all qualified vendors who may be able to provide the specified items.”

### **Endnotes**

- . <sup>1</sup> [Texas Government Code, Title 10, Subtitle D, Section 2155.067\(c\)\(1-3\)](#)
- . <sup>2</sup> [Texas Government Code, Title 10, Subtitle D, Section 2155.067\(b\)](#)

Section 2.21

Revised: 10/23/07

## **Printing and Copying Services**

As it applies to State purchasing, printing is a means of graphic production or reproduction of paper documents using a printing press or high volume digital printing equipment. Printing is a service that requires special treatment because there are many options for procuring print and print related services, including fulfillment and mailing services. This section provides procurement instructions and summarizes state agency printing options.

### **Incidental Copying and Copy Centers**

Incidental copying is copying and document production within quantity limits and job specifications that do not reasonably require high-volume duplication equipment or services. It is the day-to-day production and copying of documents using available local and networked printers and photocopiers. State agencies are authorized to provide for their own incidental copying needs.

The needs of some agencies may make it necessary for them to maintain a copy center, which for the purpose of this document is a centralized location with multiple pieces of printing and reproduction equipment, typically with a dedicated staff assigned to the location and an order fulfillment process to support agency functions.

Staffing and equipment located within a copy center should be appropriate to the size, scope and mission of the agency. The purchase or lease of equipment is subject to review by the Texas Procurement and Support Services (TPASS) division of the Comptroller of Public Accounts (CPA) and the Council on Competitive Government (CCG) not only in regards to the merit of the individual purchase, but also in context of the entirety of equipment deployed in the copy center. Equipment typically associated with print shop operations (e.g., printing presses, folding machines, cutting machines, etc.) should not be deployed in agency copy centers.

Furthermore, agencies that maintain copy centers must meet with CCG to establish impression-per-job and/or cost-per-page guidelines that set appropriate job limits.

### **Texas Department of Criminal Justice (TDCJ) Print Shops**

Texas Department of Criminal Justice (TDCJ) provides printing services to tax-supported entities through the following Texas Correctional Industries (TCI) print shops:

- Hobby Print Shop (Marlin, TX) - focuses on digital printing services, traditional offset printing and bindery services
- Wynne Graphics (Huntsville, TX) - focuses on adhesive backed products, such as stickers and decals.

TCI maintains a third print shop, Torres Print Shop, however it is designated for internal printing for TDCJ only. For more information on the specific services provided by the TCI print shops, please see the [TCI website](#).



## **CCG Approved Print Shops**

CCG Approved Print Shops are full-service print shops that have been approved by the CCG to provide print and print related services to state agencies. Agencies are not authorized to establish full service print shops without the approval of CCG. At present there are five State Approved Print Shops located at:

- Health and Human Services Commission
- Texas Department of Public Safety
- Texas Department of Transportation
- Texas Workforce Commission
- University of Texas at Austin

These print shops provide design, digital and traditional offset printing, binding, fulfillment, mailing, and other print related services to state agencies. For more information on the State Approved Print Shop Program see the CCG website.

CCG Approved Print Shop responsibilities and procedures are established in an Interagency Contract (IAC) between CCG and the approved print shop. Certain exemptions to the procedures outlined below and other considerations are extended to the approved shops and their hosting agencies to ensure efficient operations. Specific exceptions and considerations are documented in the franchise agreement.

***For the remainder of this section the reference to State Print Shops is a reference to both TCI Print Shops and CCG Approved Print Shops collectively.***

## **Term Contracts for Print Services**

TPASS provides statewide term contracts for several print services.

The contracts and services provided include:

- Printed Envelopes (Contract 966-A1)
- Business Cards (Contract 966-N1)
- Custom Printed Continuous Feed, Tractor Fed and Snap-Out Forms (Contract 966-N2)

Although agencies may wish to utilize the procedures outlined below to acquire these services from the State Print Shops, these contracts may be used, once a waiver has been obtained from Texas Correctional Industries.

## **State Data Center – Printing**

Effective November 22, 2006, the Department of Information Resources entered into a contract with IBM to manage Data Center Services (DCS) for 27 participating Texas state agencies.

The Austin Data Center provides the infrastructure for high speed production print output and presort/barcode mail services for participating agencies. The print area can receive preauthorized print job files from DCS customers or third parties via designated file transfer methods, assign and schedule print jobs and produce high speed print output according to preauthorized specifications.

The outbound mail area can then prepare and package print jobs for distribution according to preauthorized specifications. Delivery only (non-mail) jobs are routed to delivery trucks to deliver according to specifications. If the distribution method of the print output is mail service utilizing the U.S. Postal Service, the mail will be picked up by the presort vendor for presort and barcode services and delivery to the USPS.

Although agencies may wish to utilize the procedures outlined below to acquire these services from the State Print Shops, any agency receiving infrastructure services through the DCS contract may opt to leverage this infrastructure without the need to utilize these procedures.

### **Procedure For Procuring Print and Print Related Services:**

Print and print related service procurements exceeding \$1,000 in estimated purchase price must follow the procedures outlined below. It is a violation to purposefully divide job requests for the purpose of avoiding the procedures outlined below. Agencies are encouraged to establish internal procurement procedures for print and print related service requests less than \$1,000.

Additional information, including an FAQ about the procurement process is available at <http://www.ccg.state.tx.us/printshop.html>. State agencies are encouraged to contact the Texas Procurement and Support Services Division of the Comptroller of Public Accounts, for any clarifications or other requests.

Agencies may determine best value for their print procurement using the following procedure/steps:

#### **1. Identify Print Job Specifications and Estimate Purchase Price**

State agency personnel should determine their print job specifications and estimated purchase price. Estimates may be received from State Print Shops or other entities directly without utilizing this process, but estimates received will not be considered formal bids for procurement purposes.

Agencies are encouraged to establish internal procedures to aid them in accurately assessing print job specifications and estimated purchase price for print jobs.

If an agency has a job that it needs fulfilled on a more-or-less regular schedule, that is identical or substantially the same job each time, the agency should consider that one job for purposes of this procedure. In establishing specifications, agencies will need to provide the print schedule for the Fiscal Year and the estimated quantity needed. If agencies are unsure of the exact schedule an estimate is fine. Estimates should be based on historical information, where available, to assist the State Print Shops in their bid efforts.

## 2. Submit a Print Shop Bid Request Form

State agency personnel should submit print job specifications using the State Print Shop Bid Request Form that can be accessed at <https://www.window.state.tx.us/ccg/>. The form allows state agencies to identify the specifications of their job and submit their specifications to the State Print Shops simultaneously. The State Print Shops will respond to bid requests in the customer identified time period if they are capable of completing the work according to identified specifications.

## 3. Evaluate Bids and Award Job – State Print Shops

Upon receipt of bid responses from the State Print Shops, agency personnel must perform an analysis of the bids received for documentation in the procurement file. If agency personnel determine best value would be achieved through a State Print Shop, they must submit their procurement documentation to the agency's certified procurement officer or delegated procurement authority for review and approval, prior to procuring the services from the appropriate print shop, identified as best value.

*Provided no bids are received from the State Print Shops, agencies may proceed to Step 4(A).*

*Provided bids are received, an evaluation has been conducted and the agency makes the determination not to award to the State Print Shops, procedures outlined in Step 4(B), must be followed.*

## 4. Competitive Bid/Open Market Procurement

Agencies are delegated the authority to proceed with a competitive solicitation process for printing procurements estimated at \$100,000 or less, with the following requirements and exceptions:

- A.) In those instances where **no bids were received** from Step 3, agencies must submit documentation of no-bid responses and/or waivers for review by the CPA TPASS Procurement Manager, prior to conducting the solicitation process or posting to the ESBD. Once CPA has reviewed and approved that no bids have been received, agencies are delegated the authority to proceed with a competitive solicitation process for procurements estimated at \$100,000 or less, in accordance with current delegation authority.
- B.) In those instances where **bid responses were received** from Step 3, and the agency has made the determination not to award to the State Print Shops, agencies must submit the bid tabulation and documentation of no-bid responses and/or waivers received AND evidence that best value can be obtained through a competitive solicitation (i.e., informal quotes, etc.) to the CPA TPASS Procurement Manager for review and approval, prior to the agency conducting the solicitation process or posting to the ESBD.

**If TCI provided a bid response in Step 3**, agencies must also provide TCI a final opportunity to negotiate on price prior to seeking approval to conduct a competitive solicitation. In accordance with state statute, agencies will be required to utilize TCI if they can provide the requested service and if they submit the lowest price in a best and final request.

Provided approval is received from CPA TPASS Division, an agency may proceed with the competitive solicitation process for procurements estimated at \$100,000 or less.

Provided no approval is received, the agency will be directed to award to the State Print Shop determined to be best value by CPA TPASS Division.

- C.) All printing competitively solicited above \$25,000 shall be posted to the Electronic State Business Daily (ESBD). No exceptions authorized. (GC 2155.083)
- D.) Agency print procurements exceeding \$100,000 in estimated cost must be submitted to TPASS CAT-RAD for review and possible delegation.
- E.) Printing requests, with scheduled delivery and/or blanket orders within the fiscal year, shall be considered as a whole for establishing the dollar threshold limitations. It is a violation to purposefully divide job requests to avoid the intent of this requirement.
- F.) In all instances, agency personnel shall clearly and adequately document the evaluation criteria which will be used in establishing best value.

#### **Procedure for Procuring Print and Print Related Equipment**

The purchase or lease of print and print related equipment, whether requested by an approved print shop or not, requires the review and approval of TPASS in consultation with CCG. The purpose of the review is to limit capital purchases for high capacity print shop quality equipment to State Print Shops working to meet the needs of agencies. Should an agency require a specialized piece of print equipment it is recommended that they contact TPASS and CCG to discuss their needs prior to proceeding with the procurement.

#### **State Library Requirements**

If you are producing a State publication, you must meet State Library Deposit requirements. State publications are information, printed or otherwise, that is publicly distributed and meets certain statutory criteria. For information on State publications and deposit requirements, contact the Texas State Publications Depository Program.

# Specifications

A specification is a description of a product or service a user seeks to procure, and is also, a description of what a bidder must offer to be considered for an award. Specifications are the primary means of communication between an agency and a vendor.

Specifications control:

- the quality level of the product;
- the amount of competition;
- the suitability of the product or service for the job to be done; and
- the method of evaluation used in making an award and in determining the best value bid for the purchase.

## **Characteristics of an Effective Specification:**

- **SIMPLE:** Avoid unnecessary detail, but be complete enough to ensure that requirements will satisfy their intended purpose.
- **CLEAR:** Use terminology that is understandable to the agency and bidders. Use correct spelling and appropriate sentence structure to eliminate confusion. Avoid legalese type language and jargon whenever possible.
- **ACCURATE:** Use units of measure that are compatible with industry standards. All quantities and packing requirements should be clearly identified.
- **COMPETITIVE:** Identify at least two commercially available brands, makes, or models (whenever possible) that will satisfy the intended purpose. Avoid unneeded "extras" that could reduce or eliminate competition and increase costs.
- **FLEXIBLE:** Avoid totally inflexible specifications which prevent the acceptance of a bid that could offer greater performance for fewer dollars. Use approximate values such as dimensions, weight, speed, etc. (whenever possible) if they will satisfy the intended purpose. If approximate dimensions are used, it should be within a 10% rule of thumb unless otherwise stated in IFB.

A bidder or contract participant may provide free technical assistance to an agency. A state agency may not accept a bid or award a contract to a vendor who received compensation from the agency to participate in the preparation of the specifications or request for proposals on which the bid or contract is based.

**Texas Specifications** The CPA has developed Texas specifications for a number of commodities purchased in volume by the state. These specifications are identified by a specification number and effective or revised date. Reference to these specifications is listed in the CPA Commodity Book and Term Contract Book and should be used whenever possible. Copies of Texas specifications are available from the CPA Texas Procurement and Support Services Division and on the Web at <http://www.window.state.tx.us/procurement/pub/specifications-library/numeric>. The specifications are listed by class and item and may be downloaded for agency use.

These specifications establish minimum standards of quality, but do not preclude the acceptance or awarding of bids which offer better quality commodities. In completing a requisition for commodities covered by these specifications, list the specification number and a date as a reference.

## **Agency Specifications**

If no Texas specifications exist for the commodity needed, acceptable specifications covering the agency's

needs must be developed. These specifications should provide a clear and accurate description of the requirements for the merchandise or service to be purchased.

Specifications must be clear and understandable to the bidders. They must permit competition between products of equal quality.

Descriptions may include a statement regarding the qualitative nature of the purchase and should identify minimum essential characteristics and standards to which the purchase must conform if it is to satisfy its intended use. "Performance" requirements should be identified. "Design" or "construction" specifications may be written where minimum mandatory design characteristics are appropriate.

**Internet Source:** <http://www.window.state.tx.us/procurement/pub/specifications-library/numeric>

SECTION 2.23

REVISED DATE: 11/09/06

# Excess Obligations Prohibited

The Texas Constitution and the General Appropriations Act prohibit a state agency from incurring obligations in excess of amounts lawfully appropriated by the Texas Legislature over the course of a biennium. Therefore, any installment purchase, lease purchase, lease with option to buy, equipment lease, or any other type of purchase which incurs an obligation beyond the current appropriations act is strictly prohibited, unless such obligation is expressly conditioned upon continued legislative appropriation.

Notwithstanding this prohibition, a state agency may incur an excess obligation if a state agency's proposed installment purchase arrangement has been certified by the Comptroller of Public Accounts (CPA) as cost effective.<sup>1</sup> However, any certification by CPA related to obligations incurred for the purchase or lease of automated information systems equipment may only be made if the requesting agency has on file with the Legislative Budget Board, a Biennial Operating Plan, including any amendments, and the plan has been approved by the Legislative Budget Board.

For CPA to make a certification as provided for under the General Appropriations Act the following information must be provided with the purchase requisition and be signed by the purchasing director or other proper authority of the submitting agency:

- A statement comparing the anticipated cost savings to be realized through the present acquisition of the equipment versus the outright purchase of the equipment at a later time when adequate funds become available;
- A statement affirming that the ordering entity expects to be able to make payments beyond the current biennium without having to rely on an increased level of general revenue appropriations;
- An estimate of the total anticipated interest charges over term of the installment contract; and
- A statement indicating that the lease (or installment) purchase is the most cost effective means of obtaining the needed equipment despite the additional interest cost to the state.

In addition to the above requirements any purchase agreement subject to this section must contain a clause which enables the agency to cancel the agreement in the event the legislature curtails or fails to appropriate money to cover the term of the agreement to prevent any unconstitutional excess obligation.<sup>2</sup> For example, "Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature."

## Penalty for Requisitioning Officer or Employee

If any excess obligation is incurred that violates the General Appropriations Act or the Texas Constitution, the State Auditor shall certify the fact of the violation and the amount of over-obligation to the Comptroller, and the Comptroller shall deduct an amount or amounts equivalent to over-obligation from the salary or other compensation due the responsible disbursing or requisitioning officer or employee, and apply the amount to the payment of the obligation.<sup>3</sup>

## Legal Authority:

<sup>1</sup> [General Appropriations Act, Article IX, Section 6.04](#) (2002 – 2003 Biennium).

<sup>2</sup> [Texas Constitution, Article III, Section 49](#).

<sup>3</sup> [General Appropriations Act, Article IX, Section 6.04](#) (2002 – 2003 Biennium);  
[Texas Constitution, Article XVI, Section 10](#).

# Bidder Affirmations and Required Clauses

The Comptroller of Public Accounts (CPA), requires prospective bidders on any solicitation document to affirm their compliance with particular state laws, federal laws or CPA rules. Bidder affirmations become part of any solicitation and are binding terms and conditions of any resulting contract or purchase order. Any misrepresentation or false statement that is deemed material by the state, is a breach of contract, which shall void or make voidable any solicitation or resulting contract. Such bidders may be removed from the Centralized Master Bidders List (CMBL) or any other state bid list, in addition to being barred from participating in future contracting opportunities with the State of Texas.

**REQUIRED AFFIRMATIONS:** The following affirmations are standard terms and conditions that are required in all solicitations:

- The bidder has not given, offered to give, nor intends to give at anytime hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid.
- Pursuant to Texas Government Code, Title 10, Subtitle D, Section 2155.004(a), the bidder has not received compensation for participation in the preparation of specifications for this solicitation.
- Pursuant to Texas Government Code, Title 10, Subtitle D, Section 2155.004(b), the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- Pursuant to 15 U.S.C. Sec. 1, et seq. and Tex. Bus. & Comm. Code Sec. 15.01, et seq. neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- If applicable, pursuant to Texas Family Code, Title 5, Subtitle D, Section 231.006(d), regarding child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to Section 231.006 must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.
- Bidder agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
- Bidder agrees to comply with Texas Government Code, Title 10, Subtitle D, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas.
- Bidder certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with executive head of a state agency. If Section 669.003 applies, bidder will complete the following information in order for the bid to be evaluated:

Name of Former Executive: \_\_\_\_\_  
Name of State Agency: \_\_\_\_\_  
Date of Separation from State Agency: \_\_\_\_\_  
Position with Bidder: \_\_\_\_\_  
Date of Employment with Bidder: \_\_\_\_\_

- By signing this bid, bidder certifies that if a Texas address is shown as the address of the bidder, bidder



qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, [Chapter 20](#)

**REQUIRED CLAUSES:** The following clauses are standard terms and conditions that are required in all solicitations.

- Pursuant to Chapter 2260 of the Texas Government Code, any dispute arising under a contract for goods and services for which this chapter applies must be resolved under the provisions of this chapter.
- The Contractor shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of contractor or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this contract.
- Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act").
- Any terms and conditions attached to a solicitation will not be considered unless specifically referred to on this solicitation and may result in disqualification.
- Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature. See Section 2.24 Excess Obligations Prohibited.

*The above clause is required if a purchase or service transcends a biennium.*

- Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract awards.

## **Section 2.25**

**Rev. 10/9/03**

# Technology Access Clause

Texas Government Code, Title 10, Subtitle D, Section 2157.005 (<http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm>), requires the Comptroller of Public Accounts and the Department of Information Resources, in consultation with other state agencies and after public comment, to develop a technology access clause to allow for both visual and non-visual access. The clause is to be included in all documents (offers, quotes, etc.) and contracts entered into by the state or state agencies related to the procurement of Automated Information System (AIS) products, regardless of dollar amount.

The clause, as adopted, was published in the Texas Register on October 24, 1997, Issue (22 TexReg 10551). The clause was modified to address the submitted comments.

The clause states, as a condition for the expenditure of state funds in the purchase of an AIS product, that the technology:

- will provide equivalent access for effective use by both visual and non-visual means;
- will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; and
- can be integrated into networks for obtaining retrieving, and disseminating information used by individuals who are not blind or visually impaired.

This clause applies to all contracts made by state agencies that involve the purchase of an AIS product, without regard to:

- the source of funds used to make the purchase;
- whether the purchase is made under delegated purchasing authority; or
- whether the purchase is made under the authority of the Texas Government Code, Title 10, Subtitle D, or other law.

## **The clause is to read without modification:**

"The Vendor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to (name of State Agency) that the technology provided to (name of State Agency) for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- providing equivalent access for effective use by both visual and non-visual means;
- presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
- being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance."



# Historically Underutilized Business Program

The Comptroller of Public Accounts (CPA) administers Texas' Statewide Historically Underutilized Business (HUB) Program in accordance with Texas Government Code (TGC), Chapter [2161](#) and Texas Administrative Code (TAC), Title 34, Part 1, Chapter [20](#), Subchapter B. The purpose of the Statewide HUB Program activities are designed to promote full and equal business opportunities for all businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study dated 1994. State agencies shall make a good faith effort to utilize HUBs in contracts in the procurement process of construction, goods, services (including professional and consulting), and public utility contracts. Each state agency shall make a good faith effort to assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following percentages:

- .. 11.9% for heavy construction other than building contracts;
- .. 26.1% for all building construction, including general contractors and operative builders contracts;
- .. 57.2% for all special trade construction contracts;
- .. 20% for professional services contracts;
- .. 33% for all other services contracts; and
- .. 12.6% for commodities contracts.

For estimated purchases **up to \$5,000** - Statute does not require a competitive bid process. Although they are not required to do so, agencies are encouraged to purchase from HUBs in these instances.

For estimated purchases of **\$5,000.01 to \$25,000** - Agencies must obtain at least 3 informal bids, 2 of which must be from CPA certified HUBs.

For estimated purchases **over \$25,000** - Agencies must solicit bids or proposals from all eligible vendors on the Centralized Master Bidders List (CMBL) serving the agency's geographic region.

**NOTE:** An agency may supplement the CMBL with CPA certified HUBs at any time if it determines that supplementing the CMBL may increase the number of HUBs that submit bids.

## **Historically Underutilized Business Subcontracting Plan (HSP)**

The ordering entity is required to identify subcontracting opportunities prior to the solicitation for all purchases of \$100,000 or more. If subcontracting opportunities are probable the contracting agency will state such probability in its bid, proposal, offer or other applicable expression of interest (solicitation) and require the prime contractors (respondents) to complete and submit an HSP with their response. Regardless if they can fulfill the entire contract work specified in the contracting agency's solicitation, the prime contractor must complete and submit an HSP with their response.

The HSP is sent with the solicitation as an attachment and should also include a list of vendors from the CPA's Centralized Master Bidders List (CMBL) that may be capable of performing the contract opportunities with the solicitation. In accordance with 34 TAC [§20.14](#), responses that do not include a completed HSP with their bid, proposal, offer or other applicable expression of interest, shall be rejected due to material failure to comply with advertised specifications. Once accepted, the HSP will become a provision of the contract.

**Note:** The list provided is for information only and CPA does not endorse, recommend nor attest to the capabilities of any company or individual listed. A complete list of CPA certified HUBs is available on-line at <http://www2.cpa.state.tx.us/cmb/cmbhub.html>.

In the preparation of their response, and their completion of the HSP, if the prime contractor determines that they will be subcontracting any portion of the contract work, they must comply with provisions of 34 TAC [§20.14](#) relating to developing and submitting a subcontracting plan which includes notifying HUBs and minority/women trade associations of the work they intend to subcontract, and providing the HUBs a reasonable period of time to respond to their notice. "Reasonable time" in this context is no less than five working days from receipt of the notice to respond, unless circumstances require a different time period which is to be determined by the soliciting agency and documented in the project file. The notice shall, in all instances, include a quantitative description of the subcontracting opportunities and identify the location to review contract specifications.

If the potential contractor/vendor is selected and decides to subcontract any part of the contract work after the award, the contractor/vendor must comply with provisions of 34 TAC [§20.14](#) relating to developing and submitting a subcontracting plan prior to any modifications or performance in the awarded contract. Subcontracting in this case must be authorized by the agency before proceeding. If the selected contractor/vendor subcontracts any of the work without prior authorization and approval of the contracting agency, the contractor/vendor is deemed to have breached the contract and is subject to any remedial actions provided by TGC, Chapter [2161](#) and 34 TAC [§20.14](#). The contracting agency may report non-performance relative to its contracts to the commission in accordance with 34 TAC Chapter [20](#), (relating to the Vendor Performance and Debarment Program).

The contractor/vendor shall maintain business records documenting its compliance with the approved HSP and shall submit a Progress Assessment Report to the ordering entity monthly and in the format required by the

contract documents. Documentation of the contractor's/vendor's good faith efforts shall be maintained by the ordering entity in the contract file for determining whether the value of the subcontracts to HUBs meets or exceeds the HUB subcontracting provisions specified in the contract.

Electronic copies of the HUB Subcontracting Plan and Progress Assessment Report are available on-line at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms>.

## **Reports**

- The HUB Report includes a summary and analysis of expenditures made to certified HUBs by state agencies and institutions of higher education. The report is compiled and published on a semi-annual basis and is used to ensure compliance and tracking. HUB Reports and reporting procedures are available on-line at <http://www.window.state.tx.us/procurement/prog/hub/hub-reporting>.
- Agencies will continually maintain and compile monthly information relating to the agency's use of HUBs, by each operating division, including information regarding subcontractors and suppliers.
- Agencies must refer to the CPA's CMBL and HUB Directory at <http://www2.cpa.state.tx.us/cmbl/cmblhub.html> to locate HUBs. If an agency is unable to locate a HUB from the CPA's CMBL and HUB Directory, the agency must make a written notation in the procurement file of all the reference sources used for the purchase.

For further information on HUB Certification, Compliance and HSP, call 1-888-863-5881.

Legal Source: [Texas Government Code, Title 10, Subtitle D, Section 2161](#)  
[CPA Rule 34TAC 20.11 - 20.24](#).

Internet Source: <http://www.window.state.tx.us/procurement/prog/hub/hub-forms>

SECTION 2.28

REVISED DATE: 06/09/2006

## Surety Bonds

The Comptroller of Public Accounts (CPA) discourages the use of performance bonds on open market or delegated purchases unless there is either a compelling need or statutory requirement (See TGC Section [2156.004](#) for the statutory requirement). Placing bond requirements in the specifications can restrict competition and delay the award, as well as raise the cost of the contract to the state.

Since each ordering entity is responsible for determining its own needs, an ordering entity may require the successful bidder to post a bond to ensure the bidder's performance. In order to do this, the bonding requirement must be stated in writing as a part of the specifications in the Invitation for Bids (IFB).

As a guide for determining the value of bond requirements, bonding levels for CPA term contracts (if a bond is required) are listed below:

Awards up to \$100,000 - No bond required  
\$100,001 to \$250,000 - \$25,000 bond  
\$250,001 to \$500,000 - \$50,000 bond  
Over \$500,001 - \$50,000 plus 5% of the amount over \$500,000 rounded to the next \$1,000

Pursuant to Texas Government Code Section [2156.004](#), the CPA may require a bid deposit, if necessary, in an amount which will be determined by CPA. If CPA requires a deposit, this amount must be stated in the public notice and the Invitation for Bid. CPA will refund the bid deposit of an unsuccessful bidder on the award of a bid or the rejection of all bids. CPA may also accept a bid deposit in the form of a blanket bond.

The above requirements should be followed for procurement initiatives that have been delegated to agencies that are over \$100,000 in value. For bonding requirements associated with major contracts (over \$1 million in value), agencies should refer to the State Contract Management Guide at:  
<http://www.window.state.tx.us/procurement/pub/contractguide/contractguide>

**NOTE:** Bonding companies have to be U. S. Treasury listed. Bonds completed (signed) by an out-of-Texas surety require a counter signature by a Texas resident agent of a company chartered or authorized to do business in Texas.

**Please consult your legal counsel for guidance when requiring bonding.**

SECTION 2.29

REVISED DATE: 09/05/06

# Liquidated Damages

Liquidated damages establish a specific contractual dollar amount that the ordering entity has determined is a reasonable estimation of the damages owed in the event of a breach of the contract. An ordering entity should closely examine its needs for including liquidated damages. If required, the liquidated damages must be included in the specifications. Consult your entity's legal staff regarding the establishment of liquidated damages because certain legal principles must be applied to render the damages valid.

**Note:** Proper contract management/development should include provisions that adequately protect the state from default.

SECTION 2.30

REVISED DATE: 06/98



# Bid Advertisement Requirements

## **Bid Advertisement Requirements**

State agencies are delegated the authority to make purchases for commodities up to \$25,000, except for commodities on term or scheduled contracts. This includes the authority to procure items such as fuel, perishable foods, publications, distributor items, and emergency items. Agencies are required to solicit bids from all eligible vendors listed on CPA's Centralized Master Bidders List (CMBL).

The purchase of services is delegated to state agencies up to \$100,000, except for services on term contracts. "Services" is defined as the furnishing of skilled or unskilled labor such as janitorial or temporary personnel, but does not include professional and consulting services or services of a public utility. **Note:** Contracts for Consulting Services over \$15,000 must be published in the Texas Register (effective 9/1/97). For additional information on Texas Register Notices, please contact the Secretary of State. Purchases exceeding \$100,000 must be reviewed by the CPA prior to the state agency solicitation of IFB's.

## **Contract Advertisement Requirements on the Internet - ESBD**

In accordance with Texas Government Code, Title D, Subtitle D, Section 2155.083 and the Texas Administrative Code, Title 34, Chapter 20.212, the requirement to advertise solicitations using the Electronic State Business Daily (ESBD) applies to all purchases exceeding \$25,000 regardless of source of funds used for the procurement, (including delegated purchases), emergency, construction projects, professional or consulting services, proprietary or purchases exempt from CPA's purchasing authority. Verification of the ESBD advertisement is required in the purchase file. The ESBD is available on the internet at

<http://esbd.cpa.state.tx.us/>

**Note:** This rule is effective June 1, 1998 and applies to all contracts awarded after July 1, 1998.

### **Estimated Procurement/Contract Amount**

### **Minimum days for Advertisement**

Exceeding \$25,000:

If posting entire bid or proposal solicitation package	14 calendar days
If <u>not</u> posting entire bid or proposal solicitation package then a notice must be posted that includes at a minimum the following:	21 calendar days

- a short title and a brief description of the goods or services to be procured and any applicable state product or service commodity codes for the goods and services;
- the last date and time on which bids, proposals, or other applicable expressions of interest will be accepted;
- the estimated quantity of goods or services to be procured;
- if applicable, the previous price paid by the ordering entity for the same or similar goods or services;
- the estimated date on which the goods or services to be procured will be needed;
- the name, business mailing address, and business telephone number of the ordering entity point of contact to obtain all necessary information related to making a bid or proposal or other applicable expression of interest for the procurement contract; and
- the agency's purchase requisition number

**Note:** Only registered agents may post procurement notices on the Electronic State Business Daily. Designation and registered agent authority is coordinated at the agency level by the agency supervisor at each state agency.

Each state agency's registered agent must also record the action resulting from the posting in the Award Notification section of the Electronic State Business Daily. The 21 day advertisement period is for those procurements where "the entire bid or proposal solicitation package" is **NOT** posted electronically on the ESBD. A notice with information identified above still must be posted. Reasons which you may not be able to post the entire bid or proposal solicitation package may be due to the length or the complexity of the procurement or the attached specifications, samples or drawings. You should consider this when determining the length of time for the posting. **A procurement or contract award made by a state agency that violates the applicable minimum time for posting is void.**

**Legal Source:**

Texas Government Code, Title 10, Subtitle D, Section 2155.083, Chapter 508, §1

Texas Administrative Code, Title 34, Section [20.212](#).

**Internet Source:** <http://esbd.cpa.state.tx.us/>

SECTION 2.31

REVISED DATE: 01/08

# Negotiating Contracts

In almost all instances, purchases are based on competitive bids. No negotiations of a contract are authorized in a competitive bid environment. However, negotiation of contracts is permitted and encouraged for other procurement methods which include:

- emergency purchases when bidding is not practical (see Section 2.18, Emergency Purchases);
- purchase of an item for which there is only one source of supply (see Section 2.21, Proprietary Purchases);
- purchases by means of a Request for Proposal (RFP) with pre-approval from CPA (see Section 2.10, Request for Proposals).

SECTION 2.32

REVISED DATE: 06/98

# Centralized Master Bidders List (CMBL)

## **Introduction:**

The Centralized Master Bidders List (CMBL) is a database of registered vendors who have provided contact information and goods/services they offer. Texas Government Code, Title 10, Subtitle D, Subchapter E. Section [2155.263](#) requires the Comptroller of Public Accounts (CPA) to maintain the CMBL. Bid Invitations and Requests for Proposals (RFPs) are for the solicited commodity and/or service. Vendors pay a nominal annual fee to receive bid invitations and RFP's for solicited commodities and/or services.

## **Utilization of the CMBL**

All agencies and institutions of higher education utilize the CMBL for all purchases or other acquisitions including the acquisition of services, for which competitive bidding or competitive sealed proposals (CSP/RFP) are required. The CMBL is available on the Internet at <http://www2.cpa.state.tx.us/cmb/cmbhub.html>

The CMBL is to be used for all available procurement processes authorized in the State Government Code and to the fullest extent possible by state agencies that make purchases exempt from the CPA purchasing authority.

Agencies shall solicit bids or proposals exceeding \$25,000 from all eligible vendors on the CMBL which serves the agency's geographic region.

## **Required Use**

Unless exempted by law, the CMBL must be used for all procurements subject to CPA's procurement authority. The CMBL must also be used to the fullest extent possible by state agencies that make purchases exempt from CPA's purchasing authority. The CMBL may also be used to gather information for noncompetitive procurement processes and for vendor performance data.

The CMBL is to be used for purchases over \$25,000 to locate all vendors who provide the required commodity or service and also service the agency's geographic region.

## **Supplementing the CMBL**

Agencies may supplement the CMBL if it enhances competition with the approval of the head of the agency or designee. The CMBL may also be supplemented if selecting from the agency's list of HUB vendors or selection from the HUB directory for increased HUB participation in the solicitation.

## **Other Supplements**

The CMBL may be supplemented by obtaining written approval from the head of your agency or designee. This process should be used where the requirement to solicit only CMBL vendors is not in the best interest of the State of Texas. For example, this process may be used in circumstances where soliciting from non-CMBL vendors will demonstrably increase competition.

## **Vendors**

The CMBL is comprised of manufacturers, suppliers, and others wishing to furnish materials, equipment, supplies and services to the State.

The vendor has the responsibility of maintaining their CMBL profile to ensure correct information for receipt of bids based on products and/or services which can be provided for selected districts for the State of Texas. Bidders are urged to carefully consider the class and item numbers and to list only those which they can supply on a routine basis as bidding opportunities are dependent upon this information.

[Texas Government Code, Title 10, Subtitle D, Subchapters A & B, Chapter 2157,](#)

## **CMBL Registration**

- Online registration activates the profile within 30 minutes.
- The annual payment established by the commission for registration/renewal – may be paid online by credit/debit card or check withdrawal.
- Applications mailed in may take up to 30 days to process (to encourage vendors to use the on line system).
- A mailed payment must be remitted in US dollars payable to the Comptroller of Public Accounts. The hard copy application must be included with the payment.
- Incomplete registration or completion of the application delays profile activation.

## **Commodity Code Selection**

CPA references the National Institute of Governmental Purchasing (NIGP) Commodity Book, which numerically classifies all supplies, equipment, materials and services based on class and items. The class and item code is required on the Purchase Order.

[http://www2.cpa.state.tx.us/com\\_book/index.html](http://www2.cpa.state.tx.us/com_book/index.html)

All vendors signed up for class and items referenced on open market solicitations, term contracts or schedules are automatically included in the invitation for bids (IFBs) for each of these procurement types. The IFBs are available on line on the Electronic State Business Daily. <http://esbd.cpa.state.tx.us>

## **CMBL Profile Updates/Changes**

Vendors have the capability to update their profile and pay the renewal fee on-line by accessing <http://www.window.state.tx.us/procurement/prog/cmb1>

Changes to tax identification numbers or business names require the vendor to submit the information by fax to 512-236-6163 on letterhead signed by an owner, partner or corporate officer.

## **Vendor Performance Tracking**

The Vendor Performance Tracking Program was designed to enhance the relationship between the vendor community, state agencies and cooperative purchasing members. The vendor tracking program provides a comprehensive tool for evaluating vendor performance and for reporting both satisfactory and unsatisfactory performance.

[http://www.window.state.tx.us/procurement/prog/vendor\\_performance/VPTS](http://www.window.state.tx.us/procurement/prog/vendor_performance/VPTS)

Information regarding reported vendor performance can be found on each vendor's profile on the CMBL website.

<http://www2.cpa.state.tx.us/cmb/cmbhub.html>

### **Removal from the CMBL**

A vendor may be removed or temporarily suspended from the CMBL for one or more of the following reasons:

- Failure to pay or unnecessarily delaying payment of damages assessed by the CPA
- Failure to remit the annual CMBL registration fee
- Any factor set forth in [Texas Government Code, Chapter 2155, § 2155.070](#) and [2155.077](#)

The Texas Government Code may be accessed on the Internet at: <http://tlo2.tlc.state.tx.us/statutes/statutes.html>

**Note:** A vendor who has been removed from the CMBL shall not be reinstated until expiration of period for which the vendor was removed and approval is granted by the appointed CPA officer.

### **Use of CMBL**

- The CMBL shall be used for all available procurement processes authorized in the Texas Government Code and shall also be used to the fullest extent possible by state agencies that make purchases exempt from the CPA purchasing authority.
- Purchases exceeding \$25,000 shall solicit bids or proposals from all eligible vendors of the CMBL serving the agency's geographic region.

### **Exceptions to the CMBL**

- The CPA may authorize an agency to maintain and use its own bidders' list(s) for specialized needs only by approval of the CPA in an open meeting. The requests must be made in writing to the Director of Procurement and signed by the Chief Executive Officer of the requesting agency. All requests should clearly identify the reasons and justification for the request.
- For purchases between \$5,000 and \$25,000, informal bid procedures must be followed: Obtain a minimum of 3 bids from vendors on the CMBL with 2 bids from the CPA certified Historically Underutilized Business (HUB) list (one minority-owned and one female-owned of any ethnicity). Purchases under \$5,000 may also be supplemented with non-CMBL bidders.

- An agency may supplement the bidders' list with its own list of CPA certified HUBs if it determines that supplementing the CMBL will increase the number of HUBs that submit bids.

### **CMBL Help Desk**

CMBL agency or vendor-related questions can be directed to the help desk at 512-463-3459 or by email to [e.cmb1@cpa.state.tx.us](mailto:e.cmb1@cpa.state.tx.us).

**Legal source:** Texas Government Code, Sections [2155.070](#), [2155.077](#), [2155.263](#), [2157.001 through 2157.067](#)

**Internet sources** <http://tlo2.tlc.state.tx.us/statutes/docs/GV/content/htm/gv.010.00.002155.00.htm#2155.063.00>

<http://www2.cpa.state.tx.us/cmb1/cmb1hub.html>

<http://www.window.state.tx.us/procurement/prog/cmb1>

[http://www.window.state.tx.us/com\\_book/index.html](http://www.window.state.tx.us/com_book/index.html)

SECTION 2.33

REVISED DATE: 9/2007

# Bid Receipt

## **Bid Receipt and Control of Bids**

Formal bids, by law, must remain sealed until bid opening. Proper identification of the outside of the bid envelope is important. The IFB should require the bid envelope to show the solicitation number, opening date and time and bidder's name or vendor identification number.

Upon receipt, the sealed bids should be date and time-stamped directly on the envelope, when possible or on the express delivery label, must remain sealed and kept in a secure place to prevent misplacement, loss or tampering, until time of bid opening.

Despite the instructions contained in the IFB, a bidder will occasionally submit a sealed bid without proper identification. If a bid is inadvertently opened by agency personnel other than the procurement official handling the procurement, the following must be adhered to:

Bids inadvertently opened must be resealed and marked with initials and "Opened in Error".

Envelopes/containers opened to determine the contents must be resealed and marked with initials and "Opened to Determine Contents". The IFB Number; Opening Date/Time should then be documented on the outside.

Following this procedure will allow the document(s) to retain its status as a sealed bid.

Bids received by facsimile or by an electronic means must be treated as a sealed bid document and kept secure until bid opening. These documents must reflect the date and time of receipt either via the receiving fax unit or a print out of the transmitted e-mail. If the faxed document(s) do not have a date/time stamp, one should be affixed manually immediately upon receipt.

### **Log for Bids Received:**

The use of a log for bids received is optional, however, is a convenience for answering questions of the vendor community regarding the receipt of their submitted bid documents.

The following information is suggested to be included in a Bid Receipt Log:

- Name of personnel entering information in the log
- IFB Number
- Opening Date/Time
- Date received
- Vendor Name
- Delivery Method (Fax, Express Delivery (i.e. Fed Ex, etc.), Hand Delivery, U.S. Mail)
- Tracking/Fax Number
- Package Comment

**NOTE:** Rules or procedures manuals should establish the responsibilities and steps for the receipt and control of bids. Issues addressed should include date and time stamping bids on receipt, maintaining a log of bids received, securing them until bid opening, and designating persons responsible for each of those tasks. If the ordering entity permits bid received via mail, special carrier, hand carried, or facsimile bids, that should also be addressed in the internal procedures. As information technology changes the procurement process to make it more "paperless" ordering entities should be prepared to put in place procedures for handling the receipt of bids electronically via computer.



### **Withdrawing Bids**

A bidder may withdraw their bid in person by completing a **Bid Withdrawal Form** or presenting the request to withdraw on their letterhead at any time prior to the bid opening date and time. The bidder must present identification (e.g. corporate identification card, photo identification card to match authorized person on bid, etc.) that indicates he/she represents the business withdrawing a bid. The Bid Withdrawal Form or company letter will become part of the procurement file. If a bidder submits a written or fax withdrawal letter, the written request will be added to the procurement file and given to the agency purchaser who will then make a decision on the request.

**NOTE:** Rules or internal agency procedure manuals should establish the responsibilities and steps for the receipt and control of bids. Issues addressed should include date and time stamping bids on receipt, procedures for inadvertently opened bids, maintaining a log of bids received, securing them until bid opening, and designating persons responsible for each of those tasks. If the ordering entity permits bids received via U.S. mail, special carrier, hand carried, facsimile, telephone or telegraph bids, that process should also be addressed in the internal procedures. As information technology changes and the procurement process becomes more "paperless", ordering entities should be prepared to put in place procedures for handling the receipt of bids electronically via computer.

Section 2.36

Revised 8/31/06

# **Bid Opening & Bid Tabulation**

## **Bid Opening**

The date, time and physical location of bid opening shall be stated clearly on the IFB. All bid openings shall be open to the public. The requirement for public opening of bids is a statement of openness to reduce the possibilities of collusion and favoritism and to foster public confidence in the ordering entity.

Bid opening dates may be changed and bid openings rescheduled if bidders are properly notified in advance of the new opening date. If a bid opening is canceled, all bids which were being held for opening will be returned to the bidders unopened with a cover letter indicating the reason for cancellation.

The procurement staff opening the bids may read them in any order: alphabetical by vendor or in order of date of receipt. The opening should consist of announcing information including the bid requisition number; the name of each bidder; the price or amount bid for each item number (if applicable), and the model number (if different from specified model). While the information being announced may vary due to the type of procurement, it should be sufficient to identify the bid for purposes of a written abstract or log, which becomes an official document in the procurement file.

The bid opening staff will not discuss whether a product or model meets bid specifications. Bidders will be advised to submit any concerns in writing to the appropriate purchaser.

## **Late Bids**

A bid received after the date and time established by the bid invitation is a late bid and will not be considered under any circumstances. The official clock in the bid opening room will be the sole determiner of the time of day. All bids must be in the possession of the bid opening staff and stamped not later than the posted bid opening date and time.

The ordering entity may receive bids by fax. The ordering entity's receipt of bids by fax is solely for the convenience of bidders. If all or any portion of a bid submitted by fax is received late, is illegible, or is otherwise rendered non-responsible due to equipment failure or operator error, the bid or the applicable portion of the bid will not be considered. The agency shall not be liable for equipment failure or operation error, nor will such failure or error require other bids to be rejected or the bid invitation to be re-advertised.

## **Unsigned Bids**

Bids should be checked for signature before tabulation. Bids without a signature will be disqualified and not considered valid. These bids will NOT be tabulated and will reflect "unsigned" in the comment area of the tabulation sheet and on the bid document. They will be kept with the main file, but will not be returned to the bidder.

## **Bid Tabulation**

As a general rule, bids should be tabulated when opened, but there are times when this is not practical. Some transactions cover hundreds of separate times and the time required for recording at the bid opening would be prohibitive.

All bid tabulation files shall be available for public inspection. Bid tabulations may be reviewed by any interested person during regular working hours at each agency's office. Agencies are not required to give bid tabulation information by telephone.

The bids and all documents and information about the evaluation of bids and bidders, will be withheld until after contract award.

The following must be included on the bid tabulation:

- Bidder name
- Vendor (Payee) Identification Number
- Price
- Lowest bidder identification
- Class & Item
- HUB ethnicity/gender identification

Section 2.37

Revised 4/27/06

# Preferences

## Source Preferences

The following source preferences are used when applicable goods or services can be supplied by these entities:

- **Products By Persons with Disabilities**

A preference shall be given to manufactured products of workshops, organizations, or corporations whose primary purpose is training and employing persons with mental or physical disabilities, if the products or services meet state specifications as to quantity, quality, and price. Competitive bids are not required for purchases of blind-made goods or services offered as a result of efforts by the Texas Council for Purchasing from People with Disabilities - TIBH, (see Section 2.5 Special Purchases) if the goods or services meet state specifications as to quantity, quality, and price. Reference Texas Government Code, Section [2155.441](http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm) <http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm>.

- **Texas Department of Criminal Justice (TDCJ)/Institutional Division**

A preference shall be given to items manufactured by the Texas Correctional Industries (TCI) under the Prison Made Goods Act (see Section 2.5 Special Purchases). Reference Texas Government Code, Chapter 497. <http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm>

- **Texas and United States Products and Texas Services**

A

preference shall be given to goods, including agricultural products, to those produced or grown in this state or offered by Texas bidders. If goods, including agricultural products, produced or grown in this state or offered by Texas bidders are not equal in cost and quality to other products, then goods, including agricultural products, produced or grown in other states of the United States shall be given preference over foreign products if the cost to the state and quality are equal. Reference Texas Government Code, Section [2155.444](http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm).

- **Products and Services from Economically Depressed and Blighted Areas**

A

preference shall be given to goods and services produced in an economically depressed or blighted area if the goods or services meet state specifications regarding quantity and quality; and the cost of the good or service does not exceed the cost of other similar products or services that are not produced in an economically depressed or blighted area. Reference Texas Government Code, Section [2155.449](http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm). An economically depressed or blighted area is defined by TGC, Section [2306.004](http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm).

- **Products of Facilities on Formerly Contaminated Property**

A

preference shall be given for goods produced at a facility located on property for which the owner has received a certificate of completion under Section 361.609, Health and Safety Code, if the goods meet state specifications regarding quantity, quality, delivery, life cycle costs, and price. Reference Texas Government Code, Section [2155.450](http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm).

## Specification Preferences

The following items are preferences regarding recycled materials:

- **Recycled, Remanufactured, or Environmentally Sensitive Products**

A preference shall be given to products made of recycled materials if the products meet state specifications as to quantity and quality.

Texas Government Code, Title 10, Subtitle D, Section [2155.445](http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm) and Texas Government Code, Title 5, Subtitle N, Section 361.426 requires all state agencies, institutions of higher education, state courts, judicial agencies, counties, municipalities, school districts, junior or community college districts, or special districts to follow certain precepts regarding recycling and the purchase of recycled content products.

Texas Government Code, Title 10, Subtitle D, Section [2155.445\(a\)](#) provides that all entities **"give preference to recycled, remanufactured, or environmentally sensitive products" as determined by commission rule if the purchases meet applicable specifications as to quantity and quality.**

Texas Government Code, Title 5, Subtitle N, Section 361.426(a) provides a state agency, state court, or judicial agency not subject to Subtitle D, Title 10, Government Code, a county, municipality, school district, junior or community college district, or special district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality.

Texas Government Code, Title 10, Subtitle D, Section [2155.448\(a\)](#) each fiscal year, the CPA and the Recycling Market Development Board (RMDB), by rule may identify recycled, remanufactured or environmentally sensitive commodities or services. The RMDB recommended that the CPA designate by CPA rule the following as "1st Choice" products:

- Re-refined oils and lubricants;
- Recycled-content toilet paper, toilet seat covers, paper towels;
- Recycled-content printing, computer and copier paper, and business envelopes; and
- Recycled/reused computer equipment of other manufacturers.

The 1st Choice products essentially become the default items for purchase by state agencies including institutions of higher education; that is, state agencies shall give these products preference over virgin (non-recycled) counterparts. A state agency may choose to buy the virgin (non-recycled) material counterpart of these designated products; however, a written justification letter signed by the executive head of the agency must be submitted. The justification letter must state the reason(s) for the determination that the 1st Choice product did not meet the requirements of the agency and should include applicable supporting documentation. The justification letter must be filed with the CPA.

Beginning with FY 2001, each state agency including institutions of higher education is responsible for compiling a final recycled product report by combining the CPA non-delegated recycled, remanufactured and environmentally sensitive purchase report with the state agency's delegated recycled, remanufactured and environmentally sensitive purchases. This final combined report using the format attached must be included in your agency's Annual Financial Report (AFR) submitted to the Comptroller and a copy must also be sent to CPA's Texas Procurement and Support Services (TPASS) Division to the attention of TPASS Recycling Coordinator by November 20, 2001. The CPA will post on its website the state's consolidated final recycled product report by January 15, 2002 for public viewing of state successes in supporting recycled product purchases. For additional information regarding reporting requirements please see Section 1.3.

- **Energy Efficient Products**

A preference shall be given to energy efficient products if they meet state requirements as to quantity and quality, and are equal to or less than the cost of other products that are energy efficient. This preference shall be applied by evaluating the energy use of the product offered and considering the costs of such energy use over the expected life of the equipment. The methodology for evaluating energy use and costs shall be included in the bid invitation. Reference Texas Government Code, Title 10, Subtitle D, Section [2155.442](#). 0

- **Rubberized Asphalt Paving Material**

A preference shall be given to rubberized asphalt paving material made from scrap tires by a facility in this state if the cost, as determined by life-cycle cost benefit analysis, does not exceed the bid cost of alternative paving materials by more than 15%. Reference Texas Government Code, Title 10, Subtitle D, Section [2155.443](#).

- **Recycled Motor Oil and Lubricants**

A preference shall be given to motor oils and lubricants that contain at least 25% recycled oil if the quality is comparable and the cost is equal or less than new oil and lubricants. Reference Texas Government Code, Title 10, Subtitle D, Section [2155.447](#).

- **Vendors that Meet or Exceed Air Quality Standards**

A

preference may be given to goods or services of a vendor that demonstrate that the vendor meets or exceeds state or federal environmental standards, including voluntary standards, relating to air quality; or require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality. The preference may be given only if the cost to the state for the goods and services would not exceed 105% of the cost of the goods and services provided by a vendor who does not meet the standards. Reference Texas Government Code, Section [2155.451](#).

- **Recycled or Reused Computer Equipment of Other Manufacturers**

A

preference shall be given to a manufacturer that has a program to recycle or reuse the computer equipment of other manufacturers, including collection events, recycling grants, and manufacturer initiatives to accept computer equipment labeled with another manufacturer's brand. Reference Health and Safety Code, Section [361.965\(d\)](#).

- **Foods of Higher Nutritional Value**

A

Preference may be given to contractor who provide foods of higher nutritional value and who do not provide foods containing trans fatty acids for consumption in the cafeteria. The Department of Agriculture's nutrition standards shall be reviewed in complying with this preference. Reference Texas Government Code, Section [2155.452](#).

### **Tie-Bid Preferences**

The following preferences listed below are used in breaking tie bids in accordance with current statutes. Priority is given in the sequence they are listed below (see Section 2.39 Tie Bids). To claim a preference, a bidder must mark the appropriate box on the bidding document Invitation for Bids (IFB). If the appropriate box is not marked, a preference will not be granted unless other documents included in the bid indicate a right to the preference.

- **Texas Agricultural Products**

Agricultural products grown in Texas or offered by a Texas Bidder shall be given preference over comparable products grown outside Texas when the cost and quality of the goods are equal. Agricultural products are considered "grown in Texas" if they contain any amount grown in Texas. In case of tie bids between agricultural products claiming the preference, the bidder whose product contains the greatest percentage of the product grown in Texas shall prevail. For the purpose of this preference, agricultural products include, among other things, textiles and fiber products, processed and unprocessed foods, feed, lumber, and forestry products, live animals, plants, flowers, and nursery stock. Reference Texas Government Code, Title 10, Subtitle D, Section [2155.444\(a\)](#).

- **Texas Produced Supplies, Materials, or Equipment**

Supplies, materials, or equipment produced in Texas shall be given preference over comparable goods produced outside Texas when the cost and quality of the goods are equal. Supplies, materials, and equipment are considered to be produced in Texas if they are manufactured in Texas; "manufactured" does not include the work of packaging or repackaging. Reference Texas Government Code, Title D, Subtitle D, Section [2155.444\(a\)](#).

- **Texas Resident Bidder**

Goods produced or offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident shall be given a first preference and goods produced in this state or offered by other Texas bidders shall be given second preference, if the cost to the state and quality are equal. Reference Texas Government Code, Title 10, Subtitle D, Section [2155.444\(a\)](#).

- **U.S. Produced Supplies, Materials, or Equipment**

Supplies, materials, equipment, or agricultural products produced or grown in the United States shall be given preference over foreign products when the cost and quality are equal, if comparable goods of equal cost and quality produced or grown in Texas or offered by Texas bidders are not available. Reference Texas Government Code, Title 10, Subtitle D, Section [2155.444\(b\)](#).

**NOTE:** For Reciprocity Information see Section 2.40 Reciprocity.

SECTION 2.38

REVISED DATE: 08/07

# Tie Bids

In breaking tie bids, the ordering entity must use the preference claimed by the bidder on the bidding documents/invitation for bids. In accordance with current statutes, **priority** is given in the following sequence:

1. Texas Agricultural Products
2. Texas Produced Supplies, Materials, or Equipment
3. Texas Resident Bidder and a Service-Disabled Veteran
4. U.S. Produced Supplies, Materials, or Equipment
5. Offered by a Historically Underutilized Business (HUB)

If two bidders bid the same bid price and preferences, the bid is awarded by **drawing lots** by tossing a coin or drawing names with two witnesses to oversee actual occurrence and initial bid tabulation. If two bidders bid the same bid price and the preferences checked are different, then the award is based on the priority listed above.

Examples:

Bidder	A / B
TX. Agricultural Product	
TX. Product	X
TX. Resident Bidder	
U. S. Product	X
Offered by HUB	
Offered by Service-Disabled Vet	

Award is made to Bidder A, since priority is given to the Texas Produced Product over a U. S. Produced Product.

Bidder	A	B
TX. Agricultural Product	X	X
TX. Product	X	X
TX. Resident Bidder	X	
U. S. Product		

Award is made to Bidder B, since both bidders show preference to Texas Agricultural and Texas Products, priority is given to the Texas Resident Bidder over the Product offered by a HUB.

Bidder	A	B
TX. Agricultural Product		
TX. Product		
TX. Resident Bidder	X	X
U. S. Product		



**Award is made by drawing lots.**

Bidder	A	B
TX. Agricultural Product		
TX. Product	X	X
TX. Resident Bidder		
U. S. Product	X	X
Offered by HUB		X

Award is made to Bidder B, since both bidders show preference to Texas and U.S. Products, priority is given to the product offered by a HUB.

SECTION 2.39

REVISED DATE: 06/98

# Reciprocity

*Revised 02/09/2007*

[Skip Intro and go to Reciprocity Reference Links]

Texas law requires that out-of-state bidders who reside in states that grant resident bidder preferences for that state's purchases be evaluated in the same manner that a Texas resident bidder would be evaluated in the out-of-state bidder's home state. Specifically the law states:

A [Texas] governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.<sup>[1]</sup>

This process of evaluating out-of-state bidders is generally known as "reciprocity."

What do we mean when we talk about "reciprocity"? Reciprocity is defined in the dictionary as "the quality or state of being reciprocal: mutual dependence, action, or influence: GIVE-AND-TAKE."<sup>[2]</sup> You may think that "reciprocal" and "to reciprocate" means giving back the same. Literally, it means something that is inversely related or the opposite. Take your muscles for example. When you bend your arm, your bicep contracts and your triceps reciprocate by stretching. One muscle contracts while the other stretches. The actions of the muscles are opposite but the amount is equal.

How does this work in a bidding situation? If a nonresident bidder's home state grants a **preference** to its resident bidders, an equal **penalty** is added to the nonresident bidder's proposal when bidding in Texas. The action is opposite, a preference becomes a penalty, but the amount is equal.

For example, state A grants its in-state bidders a 10% preference when bidding on agricultural products. By granting a 10% preference to in-state bidders, state A is essentially penalizing Texas bidders 10% for not being residents.

Now let's look at this same bidding process in Texas. Texas reciprocates by adding a 10% **penalty** to the bidder from state A which essentially gives a 10% **preference** to Texas bidders. The state A bidder gets a 10% **preference** over Texas bidders in state A. Conversely, the state A bidder gets a 10% **penalty** when bidding in Texas. That's how reciprocity works: give-and-take. If you get a preference there, you get a penalty here in an equal amount.

Reciprocity and resident bidder preferences **do not** apply in the evaluation of solicitations that involve the use of federal funds.<sup>[3]</sup> Further, reciprocity only applies to the **evaluation** of the bids and only applies in situations where the preference from the bidder's state is based on residency. Awards are made at the original bid price.

To help governmental entities in their duty to evaluate bids in a reciprocal manner, the Texas Comptroller of Public Accounts (CPA) is required to publish a list of the states that give a preference based on residency.<sup>[4]</sup> The list is published annually in the *Texas Register*. The list provided on this web site will be updated as changes occur. The list is a valuable resource. However, the CPA stresses that statutes should be construed in their entirety. Before relying on any section for evaluation of a bid, the CPA recommends obtaining and reviewing the relevant law or regulation in its entirety.

## **Reciprocity Reference Documents:**

[List of States with Resident Bidder and Reciprocal Preferences revised \[pdf version\]](#)

[State Map with Links to Individual States' Resident Bidder and Reciprocal Preferences](#)

[Statutory Citation Chart—States with Resident Bidder and Reciprocal Preferences \[pdf file revised 02/09/2007\]](#)

[\[1\] Tex. Gov't Code § 2252.002](#)

[\[2\] Webster's Third New International Dictionary, Unabridged 1895 \(1961\)](#)

[\[3\] Tex. Gov't Code § 2252.004](#)

[\[4\] \*Id.\* § 2252.003\(a\)](#)

## Awards

An award is made to the bidder offering the best value for the State while conforming to the specifications required. Complying with the specified time limit for submission of written data, samples, or models, on or before bid opening time, is essential to the acceptability of a bid.

In some instances in determining the best value, the safety record of the bidder may be considered. If considered, an adopted written definition and criteria for accurately determining the safety record of a bidder must be provided to prospective bidders in the bid specifications. The criteria must not be arbitrary or capricious and must be specifically addressed in the solicitation pursuant to the provisions of Texas Government Code Sections [2155.074](#) and [2155.075](#).

Any of the criteria listed below may be considered as long as provisions are outlined in the detailed specification. The evaluation criteria must be in the solicitation when it is advertised and should specifically outline what will be considered and what weight the criteria will have in the evaluation process. Any criteria must have objective definitions and identified measures. For more complex solicitations, an evaluation team should be utilized including individuals with working and industry knowledge regarding the procurement. Examples of evaluation criteria used in conjunction with the Request for Proposal (RFP) process can be found in the Contract Management Guide at: <http://www.window.state.tx.us/procurement/pub/contractguide/contractguide>

Typical criteria that should be used in determining the bid offering the best value, in addition to price is:

- the quality, availability, and adaptability of the supplies, materials, equipment, or contractual services to the particular use required;
- the number and scope of conditions attached to the bid;
- the ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- whether the bidder can perform the contract or provide the service promptly, or within the time required, without delay or interference;
- the character, responsibility, integrity, reputation, and experience of the bidder;
- the quality of performance of previous contracts or services;
- any previous or existing noncompliance by the bidder with specification requirements relating to time of submission of specified data such as samples, models, drawings, certificates, or other information;
- the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service; and
- the ability of the bidder to provide future maintenance, repair parts, and service for the use of the contract.

Additional general best value evaluation factors may be found in TGC Section [2155.074](#)

**Aids to Evaluation** The WRITTEN DATA RULE applies in two cases:

1. The purchaser may request written data in order to evaluate bids. A bid invitation that expressly requires the submission of written data with the bid must include the following statement or its substantial equivalent. A bid is to be disqualified if data is not submitted with the bid: **"Failure to provide the required information with the bid response will automatically disqualify the bid from consideration for award in connection with this transaction."**
2. When evaluating bids, primary consideration may be given to the written data already held out to the public.

3. Caution should be exercised when using this mandatory requirement as its use will prohibit the acceptance of an otherwise best value bid. The use of the word “may” as opposed to “will” is considered more appropriate because it gives the State the option of requesting the required information.

The following are options when considering an award:

**AWARD:** A bidder is selected which offers the best value and meets **all** the specifications of the bid.

**NO AWARD:** A no award is based on (1) no bidders responded to bid request; (2) no bidders met the specifications of the bid; or (3) agency decides it does not wish to make an award due to (a) budgetary constraints or (b) change in agency requirements.

**RE-AWARD:** An award may be made to the next lowest bidder meeting the specifications if the original vendor cannot meet the conditions of the purchase order, or permission is granted to cancel the purchase order.

When applicable, see Section 2.39 Tie Bids.

Pursuant to the Comptroller of Public Accounts rules, the state may consider debarment actions of other government entities as possible indicators of vendor responsibility. Therefore, prior to awarding any contracts, state agencies and qualified local government purchasing entities are reminded to check the list of vendors excluded from doing business at the federal level by utilizing the **Federal Excluded Persons List System (EPLS)** at <http://www.epls.gov>. Additionally, in compliance with Executive Order #13224 - "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism," state agencies are responsible for ensuring they do not enter into transactions or issue payments to those individuals or organizations identified in the **Office of Foreign Assets Control list of Specially Designated Nationals (SDN) and Blocked Persons**. The list may be found at <http://www.ustreas.gov/offices/enforcement/ofac/sdn/>.

**Tax Status** Prior to making an award, the purchaser must verify that the company is in good standing with the State. You must print the letter of corporate standing and include it in the procurement file.

A vendor's tax standing can be verified through the Comptroller's website at <http://ecpa.cpa.state.tx.us/coa/coainst.html>. Select Texas Taxes, and then select Franchise Tax Certification of Account Status. Follow on screen instructions from there. You must print the letter of corporate standing and attach to your procurement file.

You may make an award to a vendor that is on tax hold and not in good standing. If the company is not in good standing, then you should exercise one of the following options depending on what is in the best interest of the State:

- Advise the company of the tax hold and refer them to the Comptroller's office at 1-800-252-1381 or in Austin at 463-4600, from a Telecommunications Device for the Deaf (TDD) call 1-800-248-4099 or in Austin, the TDD number is 463-4621;
- Proceed with the procurement process to make an award.

**Note:** The rationale for making an award to an otherwise qualified bidder is that by making the award, an obligation to compensate the vendor is created by the receipt of good or service by the State. Once the request for warrant is processed by the Comptroller's office, the delinquent tax is collected.

Should you require assistance concerning the corporate information presented, please access <http://ecpa.cpa.state.tx.us/coa/coainst.html> or contact by e-mail at [tax.help@cpa.state.tx.us](mailto:tax.help@cpa.state.tx.us).

**Place the Order** Award the contract to the bidder offering the best value while conforming to the required specifications, terms, and conditions. Issue a purchase order or letter of award with the following required information:

- agency name and address;
- agency requisition number;
- date of the order (delivery period or beginning and ending dates of service);
- awarded vendor's name, payee/vendor identification number, and address, including zip code;
- commodity class and item number;
- Purchase Category Code (see Section 2.61 Purchase Category Codes (PCC));
- description and specifications of items or services being procured (either include all specification from the bid response or reference that the order includes "**all terms referenced in the IFB**").
- quantity and unit of measure, if applicable;
- unit price, if applicable;
- extended totals;
- total amount to be paid; and
- signature of authorized/certified purchasing representative.

**Comptroller's Internet Sources:** <http://www.cpa.state.tx.us>

<http://www.cpa.state.tx.us/taxinfo/coasintr.html>

[tax.help@cpa.state.tx.us](mailto:tax.help@cpa.state.tx.us)(e-mail address)

SECTION 2.41

REVISED DATE: 09/22/06

# **Inspection, Testing & Acceptance**

## **Inspection and Testing**

All goods are subject to inspection and testing by the State. Authorized CPA personnel shall have access to a vendor's place of business for the purpose of inspecting contracted merchandise. Tests may be performed on samples obtained by CPA request or taken from regular shipments. When products tested fail to meet or exceed all applicable specifications, the cost of the sample used and the cost of any testing shall be borne by the vendor. Goods which have been delivered and rejected in whole or in part may be, at the state's option, returned to the vendor at vendor's risk and expense or disposed of in accordance with CPA rules or applicable statutes. The vendor may request that goods be held at vendor's risk for a reasonable period of time for later disposition at the vendor's expense. Latent defects may result in revocation of acceptance of any product.

The CPA may, on request, test and inspect goods and services purchased by other state governmental entities.

The CPA may also test and inspect goods and services before they are purchased. Other state agencies may test and inspect goods and services before purchase under standard industry testing methods, or they may contract for testing. The CPA may inform agencies about available private testing facilities.

Periodic, random, unannounced inspections of goods and services purchased by the state are made by the CPA. In the case of an unusual product or circumstance, the ordering entity or the CPA Purchaser may request additional inspections.

To request an inspection, contact either the CPA purchaser assigned to the term contract or the Program Quality Assurance Inspector. If an ordering entity experiences any problem with a commodity(s) on term contract at any time, they should immediately report the problem to the associated CPA purchaser.

## **Acceptance**

Inspections should also occur when the merchandise is being unpacked, uncrated, etc. The merchandise should be checked against the copy of the purchase order for damages, shortages and compliance with the order's specifications (see Section 2.45 Shipping and Receiving).

SECTION 2.42

REVISED DATE: 04/27/06

# Contract Administration

Contract administration is often one of the most neglected parts of the procurement process. Good contract administration requires dedication and persistence. The intensity and manner of contract administration will depend on the type of contract involved. Small dollar contracts with short durations or procurements for a one-time purchase may take less administration than those for large dollar projects of a lengthy duration. Contract administration is a critical element in the procurement cycle, and must be carried out in all public purchasing operations.

## **Inspection of Merchandise**

Agencies must inspect all shipments received against orders and report any discrepancies to the vendor and CPA if order was issued by CPA. If unlisted shortages are discovered, the vendor and CPA if order was issued by CPA must be notified immediately. Unless shipments are checked immediately upon arrival and such shortage reports are made within 15 days, the vendor cannot be held responsible for shortages. A vendor may be required to pick up any merchandise not conforming to specifications and replace the merchandise immediately.

## **Substitutions**

Substitution of items called for in a contract is not permitted without the agency's prior approval. No such approval will be granted unless substituted items are of equal quality and are offered at the same or lower price.

**Cancellations** - Refer to Section 2.47 Cancellations.

## **Damages for failure to perform**

A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the state. If any merchandise delivered under a contract has been used or consumed by an agency and on testing is found not to comply with specifications, no payment may be approved by the Commission for such merchandise until the amount of actual damages incurred has been determined. A vendor who fails to pay damages assessed by the state may not be awarded additional contracts until such damages have been paid or the matter has been otherwise resolved. The CPA shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations for orders issued by CPA.

## **Vendor Performance**

The Comptroller of Public Accounts administers a Vendor Performance Program for use by all ordering entities (see Section 2.50 Vendor Performance). This program relies heavily on the ordering entities participation in gathering information on vendor performance. Contract administration and vendor performance tracking are inextricably tied.

**Legal Source:** CPA Rule 34TAC [20.39](#)

SECTION 2.43

REVISED DATE: 06/98



# Expediting & Follow-up

## **Expediting**

Expediting is the process of attempting to secure a more rapid delivery than promised by a vendor on a purchase order. Whether a vendor accommodates an ordering entity's request to expedite a delivery is strictly at the discretion of the vendor. Contractually, the vendor is only required to meet the delivery schedule of the purchase order.

## **Follow-up**

Follow-up is an effort, on the part of a qualified ordering entity, to ensure that the vendor understands that the ordering entity expects timely delivery of an order, and that the delivery schedule set forth in a purchase order will be met. By practicing follow-up, an ordering entity places vendors on notice that orders are being monitored. This usually assures prompt delivery or an unsolicited response from a vendor when delivery delays are anticipated. Follow-up often prevents unnecessary purchase order cancellations due to communication problems between the vendor and the ordering entity. The purchasing process is complete only when the merchandise is delivered and the vendor paid. On the following page is a sample letter which may be used when following up on late shipments.

Suggestions for follow-up include:

- Develop an effective system for making timely initial contact with vendors to let them know that you are a customer who expects delivery when promised.
- Initiate the follow-up process by mail or telephone.
- For delivery promises that take an extended period to accomplish, make a second follow-up contact about half-way through the delivery period to assure it is still on track.
- Forward copies of all correspondence regarding a late delivery to the appropriate CPA purchaser.
- Request assistance from the CPA, if needed, at any time.
- Vendor Performance - Ordering entities must report the vendor's performance on purchases over \$25,000 made through delegated authority granted by or from contracts administered by the CPA. Ordering entities are also encouraged to report vendor performance for purchases under \$25,000 (see Section 2.50 Vendor Performance).

**NOTE:** ALWAYS report performance occurrences to the Vendor Performance Tracking System. This will create a method for documenting and advising the CPA of exceptional performance or any problems relating to purchased products or services.

## **(Sample Expediting Letter)**

Date

Ordering Entity:

Vendor:

Order No.:

Requisition No.:

Dated:

Sir or Madam:

The referenced order was due (Due Date). Our records indicate that we have not received this merchandise. We request that delivery be made within ten (10) days from the date of this letter. If delivery cannot be completed, you will need to contact (Purchaser Name) at (Contact Information) immediately regarding the status of this order. Otherwise, we will cancel the order, purchase this commodity elsewhere, and may assess damages as permitted in your contract with (Name of Agency)

Your prompt attention to this matter will be appreciated.

Your prompt attention to this matter will be appreciated.

Sincerely,

Ordering Entity's Purchaser  
Phone Number

SECTION 2.44  
REVISED DATE: 10/05

# Shipping & Receiving

## Introduction

This section provides a set of minimum shipping and receiving procedures for state agencies. Each agency has unique needs and should amend this process for any specialized items it receives. For example, an agency that handles hazardous materials should add special handling instructions to this process for receiving those materials.

## Inbound Shipments

### *Receiving Procedures*

1. Locate the PO (purchase order) number in the carrier's shipping documents.
2. Retrieve a copy of the PO. If the PO cannot be located, contact your purchasing department to verify that the shipment is intended for your agency. If it is, continue the receiving procedure. If you are certain that the shipment is not intended for your agency, refuse the shipment.
3. If the carrier's billing method is "Transportation Charges Collect," verify that this is reflected on the PO. If it is reflected on the PO, continue the receiving procedure. If collect shipping is not reflected on the PO, accept the shipment and immediately contact the vendor to correct the billing.
4. If the PO specifies "Inside Delivery," it is the sole responsibility of the vendor to deliver to the exact floor and room number on the PO. The carrier is not responsible. If there is a problem, contact the vendor immediately.
5. If the PO specifies that the shipment should be palletized but is not, contact the vendor and give them the opportunity to palletize it locally
6. Compare the items on the PO with the manifest. If the items on the manifest do not match the items on the PO, accept the items that were ordered and contact the vendor for instructions for handling the incorrect items. Otherwise, continue the receiving procedure.
7. Compare the number of containers delivered to the number on the carrier's manifest. Record any discrepancies on the carrier's shipping documents.
8. Examine the outside of the containers for damage:
  - a. **No Visible Damage** If there is no visible damage, proceed to step 9.
  - b. **Minor Visible Damage** Record any damage to the shipping containers on the carrier's shipping document and ensure that it is signed by the delivery person before the shipment is accepted. Recording minor damages to containers provides added documentation in the event that there is concealed damage.
  - c. **Severe Visible Damage** The process for severely damaged containers differs depending on whether the order was shipped F.O.B. Origin or F.O.B. Destination. See the Carrier Shipping Terminology heading below for

more information on F.O.B.

i. For, **F.O.B. Destination**, if the shipping containers are damaged enough that it is probable that the contents are also damaged, you may:

1. Reject the entire shipment.
2. Accept the entire shipment.
3. Accept part of the shipment and reject the damaged part of the shipment.<sup>1</sup>

CPA strongly recommends option 2 or 3 to prevent unnecessary delay of required goods. If all or part the shipment is accepted, contact the vendor to obtain replacement instructions for the damaged items. If the vendor abandons the merchandise (fails or refuses to pick it up), consult your agency's legal counsel regarding disposition. If the entire shipment is refused, record the reason for refusal on the carrier's shipping documents and notify the vendor that the shipment was refused and needs to be reshipped due to severe damage.

ii. For **F.O.B. Origin**, if the shipping containers are damaged enough that it is probable that the contents are also damaged, accept the shipment and then record the damage on the carrier's freight bill. Your agency is responsible for filing freight claims with the carrier.

9. If possible, open the containers and compare their contents with the manifest. If the contents do not match the manifest, contact the vendor to attempt to resolve the discrepancy. If absolutely necessary, refuse the shipment. Otherwise, proceed to step 10

10. Accept the shipment.

## ***Inspection Procedures***

### **Inspect the Shipment for Concealed Damage**

Concealed damage is damage that was not evident at the time of receipt. If damages are discovered after unpacking the shipment, notify the both the carrier and the vendor in writing, email or facsimile within 15 days. The carrier must be notified within 15 days of receipt to be held responsible for concealed damages.

### **Compare the Shipment to the PO**

After the shipment is unpacked, check the following against the PO:

- Compare the quantity received with the quantity ordered. Check for:
- **Overshipments** – An overshipment is a shipment that contains more of an item than your agency ordered. Your agency is not obligated to pay for overshipments unless they are allowed in the terms and conditions of your contract with the vendor. An example of a contract that may allow for overshipments in this way is a paper contract. Customarily, the paper industry allows for up to 3% overshipment or undershipment in a delivery.
- **Undershipments** – Only pay for the actual items received.
- Compare the brand name and model number received with the brand name and model number on the PO. Substitutions are only acceptable if they are pre-approved by the agency that issued the order.
- Compare the shipment with the physical descriptions on the PO.

- Compare the packaging, labeling, marking, etc. with those on the PO.
- Make certain that used items are reflected as such on the PO.

Record all discrepancies in your agency's shipping documentation and coordinate with your agency's purchasers.

### **Resolve Discrepancies**

The role of the purchasing department is to:

- Document any discrepancies as required by your agency.
- Notify the vendor of all discrepancies in writing. Follow up on telephone notifications in writing. Written notification must include instructions on what action the vendor should take and the deadline for that action. Give the vendor the opportunity to make the shipment good.
- Payment should not be made on individual line items until they meet all specifications, without exception.
- If it is a major concealed shortage, notify the vendor in writing and have them ship the needed goods at their expense.
- If there is a minor shortage (such as 11 of an item rather than 12), make a notation on your agency's shipping document and then adjust the invoice accordingly.

In accordance with Texas Administrative Code, Title 34, Chapter [20.102](#), state agencies must report poor vendor performance on purchases over \$25,000.00 made through delegated authority granted by or contracts administered by the CPA. Also, you are encouraged to report vendor performance for purchases under \$25,000.00. *Refer to this manual's Section 2.50 - Vendor Performance for more detailed information concerning reporting vendor performance.*

### **Complete the Receiving Report**

Generated a complete receiving report in accordance with your agency's specific receiving procedures.

## **Outbound Shipments**

### ***CPA Term Contracts for Shipping***

The CPA offers the following Courier/Delivery Service Contracts for expedited pickup and delivery of packages within designated areas:

- **962-A1 DELIVERY SERVICE TEXAS OVERNIGHT AND SECOND DAY**
- **962-A3 COURIER/DELIVERY SERVICE - EL PASO AREA ONLY**
- **962-A4 TEXAS SMALL PARCEL GROUND DELIVERY SERVICE**
- **962-N1 COURIER/DELIVERY SERVICE - AUSTIN AREA ONLY (FORMALLY 962-A2)**

Check these contracts occasionally, as other areas may be added in the future. For more information, please see

the Contracts for Class 962 at [http://www2.cpa.state.tx.us/cat\\_page/](http://www2.cpa.state.tx.us/cat_page/).

### ***Low-Volume Outbound Shipping***

If your agency does low-volume outbound shipping that is not covered by a CPA Term Contract, attempt to get the best price for this service. Use the informal bid process to obtain the best price. Price reductions can often be secured by considering optional packaging, palletizing, etc. Simply selecting the correct carrier for the item being shipped often reduces the cost of shipping significantly. For example, some local package delivery services accept shipments up to 100 pounds for a single package. In many cases, smaller carriers offer a rate considerably less than a common carrier's minimum charge for the same shipment. The savings can often equal hundreds of dollars for a single transaction. You may wish to consult a freight broker to help reduce your agency's freight expenses.

### ***High-Volume Outbound Shipping***

If your agency does high-volume outbound shipping, and no CPA Term Contract meets its needs, solicit a formal bid for an annual contract.

## **Carrier Shipping Terminology**

"Free on Board" specifies when the title for shipped merchandise transfers to the buyer. "F.O.B." is often followed by text that specifies which party is responsible for freight charges and damages or losses while in transit. **See Table 1 - Carrier Shipping Methods** for more information.

### **F.O.B. Destination**

Under these terms, the risk of loss of goods does not pass to your agency until the goods are delivered and your agency has accepted the shipment. If the shipment is refused or never reaches its destination, the vendor is responsible for re-shipping new goods at their expense. CPA recommends that all orders be placed as "F.O.B. Destination."

### **F.O.B. Origin**

Under these terms, the risk of loss passes to your agency when the carrier picks up the shipment from the vendor. The ordering entity is responsible for the merchandise at that point. If the merchandise is damaged or lost in shipment, the ordering entity owes the vendor full payment regardless. If there are damages or shortages, the ordering entity is responsible for filing any needed freight claims to attempt to recover the damages. If goods must be replaced, a new order must be placed with the vendor. The CPA does not normally recommend using "F.O.B. Origin."

**Table 1 - Carrier Shipping Methods**

<b>Shipping Method</b>	<b>Carrier Paid By</b>	<b>Freight Listed on PO</b>	<b>Title Held in Transit By</b>	<b>Claims Filed By</b>
F.O.B Origin Freight Collect	Buyer	Yes	Buyer	Buyer
F.O.B Origin Freight Allowed	Vendor	No	Buyer	Buyer
F.O.B Origin Freight Prepaid & Charged Back	Vendor	Yes	Buyer	Buyer
F.O.B Destination Freight Collect	Buyer	No	Vendor	Vendor
F.O.B Destination Freight Prepaid & Allowed	Vendor	No	Vendor	Vendor

F.O.B Destination Freight Collect & Allowed	Buyer	No*	Vendor	Vendor
* Freight charged to vendor by deducting freight charges from invoice				

<sup>1</sup>Texas Business & Commerce Code, Title 1, Chapter 2, Section 2.601

Section 2.45

Revised Date: 9/22/04

# **Substitutions**

A substitute brand and/or model may be offered by a vendor when the vendor is unable to deliver the product ordered. The substitution offer must be in writing. The proposed substitution must:

- Meet and/or exceed the original advertised specifications;
- Be of equal quality and type; and
- Be offered at the same or lower price.

On all CPA term contract, open market, and schedule orders written approval must be obtained from the Comptroller of Public Accounts (CPA) before a substitution is permitted. Once a substitution is determined acceptable, CPA sends a written notice to the vendor and ordering entity confirming that the substitution is authorized. Upon authorization, the CPA website is updated to reflect the substitution.

For delegated purchase orders, the ordering entity must approve the substitution and send written notice to the vendor. If the substitution is determined to be unacceptable, the vendor will be requested to offer another possible substitution meeting the specification requirements. If the vendor is unable to supply an acceptable substitution, the purchaser should cancel the item or order, as applicable, and purchase the product elsewhere. Actual damages may be assessed and charged to the original vendor.



# Cancellations

## **Canceling a Purchase Order**

### ***POs Issued by Your Agency***

#### **Vendor Default**

If a vendor does not meet their contractual obligations, you may cancel your order without the vendor's permission. This applies both to individual line items of a PO (purchase order) and to complete POs. If you cancel a PO or part of a PO because the vendor did not meet their contractual obligations, file a Vendor Performance Report (see Section 2.50 Vendor Performance).

#### **Other Cancellations**

To cancel an order for any reason other than the vendor not meeting their contractual obligations, obtain the vendor's permission.

### ***Purchase Orders Issued by CPA***

CPA-generated POs must be cancelled by CPA. The same conditions for canceling agency-issued POs applies to CPA-issued POs. First, either document a vendor's default or obtain the vendor's permission to cancel. Afterward, notify CPA of your agency's desire to cancel the PO. The notification method depends on the type of purchase:

- **CPA Term Contract Purchase Order:** Submit a Purchase Order Change Notice to CPA (see Section 2.49 Purchase Order Change Notices [POCN]).
- **Open Market Purchase Order:** Submit written notification to the CPA Purchaser responsible for the Open Market Contract stating that you wish to cancel the PO.

## **Shipments Resulting from Cancelled Orders**

Agencies are not obligated to accept shipments against correctly cancelled purchase orders. If your agency intentionally accepts such a shipment, reinstate the purchase order.<sup>1</sup> To reinstate a CPA Term Contract purchase order, submit a POCN to CPA (see Section 2.49 Purchase Order Change Notices [POCN]). To reinstate an Open Market PO, submit a written request to reinstate the PO to CPA.

## **Restocking Charges**

### ***Agency-Issued Purchase Orders***

When the vendor is not in default on an order, you may pay a reasonable restocking charge or cancellation fee for canceling that order. Restocking fees should not exceed 15% of the original purchase price. Additionally, the vendor may require you to pay all of the freight charges for the cancelled order.

### **CPA-Issued Purchase Orders**

The restocking fee guidelines for agency-issued purchase orders apply to CPA-issued purchase orders.

Additionally, restocking charges exceeding 15% of the original purchase price must be approved by the CPA Purchaser responsible for the Term Contract or Open Market purchase.

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[<sup>1</sup> Texas Government Code, Title 10, Subtitle D, Section 2155.384](#)

Section 2.47

Revised: 5/7/04

## **Purchase Order Change Notices (POCN)**

The POCN forms are designed for specific uses. They should not be used if the issuance of a new purchase order would achieve the requested action in a more efficient and economical manner. Also, statements that do not effect the actual change should be limited to the “Reason” section of the form. Only information pertinent to the change itself should be placed in the “Description of Change” area of the document.

All purchasers have the responsibility of using good judgment and proper procedures in processing change notices. Any correspondence necessary for proper documentation of the change, such as cancellation letters and name changes, must become part of the referenced purchase order file.

The POCN form shall be used to:

1. Add or change items found in the original terms and conditions of the purchase order or contract.
2. Cancel individual items or an entire purchase order. Changes to an open market purchase order require additional steps as outlined below in the Distribution section.
3. Change quantities for increases and/or decreases, overshipments and/or undershipments as defined by the ordering entity’s needs (only whole units of measure as defined by the purchase order can be changed). For scheduled purchases, the purchasing entity is to seek approval and coordinate changes in quantities with the CPA unless variations are specifically addressed in the terms and conditions of the schedule.
4. Exercise options included in the original award.
5. Reinstate canceled purchase orders. For example, a purchase order is canceled due to non-delivery, but the goods are subsequently shipped by the vendor, and the ordering entity desires to keep the shipment.
6. Change pertinent information such as delivery address or ordering entity contact. A POCN form is also used to document a new serial number for equipment replacement, and change incorrect or amended rental periods in accordance with the purchase order or contract.
7. Exercise a renewal or extension option in accordance with the terms of the original purchase order or contract prior to the expiration date.

The POCN form shall not be used to:

1. Change the requisition number unless there was an error on the purchase order.
2. Extend the period of service beyond the expiration date of a purchase order or contract which has expired.
3. Increase a quantity beyond the scope of the contract.
4. Report a vendor’s performance, see Section 2.50 Vendor Performance.

## **Preparing the POCN**

The following basic information must be included on each POCN form:

- Date form is prepared
- Ordering entity name (delegated form allows entry of ordering entity's name in header of the form), address, ordering entity point of contact and phone number\*
- Vendor ID number, name and address\*
- Purchase order number\*
- Requisition number\*
- Order date\*
- Class item code\*
- Type of purchase order to be changed, when applicable.
- Line item number or contract commodity code\*
- Description of change - describe the change being made to the referenced purchase order.
- Reason for change, such as "Overshipment" or "Vendor advises item no longer available."
- Ordering entity signature and date

\* As shown on the purchase order.

When applicable, the following information must be included on each POCN:

1. If adding a line item, include the commodity code, item number, description, unit of measure, unit price, price extension, and new purchase order total. Include effective date of change and delivery terms. The preferred method of obtaining additional items from term contracts is by issuance of a new contract purchase order.

2. If increasing or decreasing quantities indicate the line item number, quantity, price extension, and new purchase order total resulting from the change.

Example:

Change quantity of item number 2 from 13 to 15.

Change price extension from \$26 to \$30.

Change purchase order total from \$196 to \$200

3. If canceling all or part of the purchase order (as allowed by contract terms) reduce quantities and adjust purchase order total accordingly.

4. Indicate beginning and ending dates when exercising renewal or extension periods.

5. Include entire option description when exercising an option allowed in the referenced purchase order or contract.

## **Distribution**

- Delegated POCN forms issued against delegated purchase orders are sent to the vendor by the ordering entity. CPA does not need a copy unless the change is for a service or emergency purchase order over \$25,000, with a copy forwarded to CPA Procurement Audit section.
- CPA POCN forms issued against CPA automated, non-automated term contract and open market orders are sent to the vendor by the ordering entity, with a copy forwarded CPA Open Market section.

Note: A POCN is not required to document changes to a purchase order as long as the total change is less than \$100.00.

### **Vendor Performance Tracking**

If the reason for the change is based on the performance of the vendor or the product, complete a Vendor Performance Form at: [http://www.window.state.tx.us/procurement/prog/vendor\\_performance/performanceform](http://www.window.state.tx.us/procurement/prog/vendor_performance/performanceform). For additional information on vendor performance, see Section 2.50 Vendor Performance.

Section 2.49  
Rev. 11/09/06

# Vendor Performance

The Comptroller of Public Accounts (CPA) administers a vendor performance program for use by all ordering entities per Texas Government Code, Title 10, Subtitle D, Section [2155.077](#). The Vendor Performance and Debarment Program relies on the ordering entity's participation in gathering information on vendor performance. Ordering Entities shall report vendor performance on purchases over \$25,000 from contracts administered by the commission or any other purchase over \$25,000 made through delegated authority granted by CPA ([TAC 20.108](#)). Ordering Entities are also encouraged to report vendor performance for purchases under \$25,000. Please provide supporting documentation for both. Ordering Entities can submit the Vendor Performance Form (VPF) electronically. Click on the following link for instructions and access to the form, [Vendor Performance Form](#).

## **Purpose**

The purpose of the Vendor Performance Tracking System is to:

- Identify vendors that have exceptional performance.
- Aid purchasers in making a best value determination based on vendor past performance.
- Protect the state from vendors with unethical business practices.
- Identify vendors that have repeated delivery and performance issues.
- Provide performance scores in four measurable categories for the CMBL vendors.
- Track vendor performance for delegated and exempt purchases.

## **Operations**

The CPA and ordering entities must document in writing any problems concerning a vendor's performance. Each ordering entity reporting vendor performance is responsible for maintaining all invoices, records, and relevant documentation explaining why the goods or services were not satisfactory and what corrective action is expected. The following are recommendations that may be implemented, if desired, by ordering entities for the maintenance of contract records related to vendor performance:

- Label a file folder for each contract administered. In each file folder include:
  1. A log sheet for a diary of activities related to the contract. Each time you speak with anyone about the contract, make a note of the date of the discussion, and the subject matter discussed.
  2. A file guide labeled "Invoices" retains a copy of all invoices in this file guide.
  3. A copy of the executed contract and other pertinent documentation, such as a copy of the original contract request and any correspondence related to the contract or contractor.
- Prepare a computer file of all contracts administered. This practice allows easy access to management information, such as expenditures, contract expirations, and contract renewals.
- Prepare a spreadsheet of expenditures. This practice is especially necessary if electronic tracking is not used. The spreadsheet can be a simple document showing the contract amount encumbered and the deduction for each invoice as it is approved for payment.
- Document the notification to the contractor of the start date. Work cannot begin before contract execution and the effective date of the contract. Although initial notification to start work may be verbal, it should also be documented in writing and a copy of the notification retained in the contract file.
- Keep copies of the correspondence with the contractor. All communications about the contract and/or the contractor should be in writing or followed up in writing and a copy placed in the contract file. This practice protects the agency and the contract manager in the event of legal problems or an audit.

- Contractor should be monitored systematically, consistently and fairly in accordance with the contract requirements. Monitor and document the performance of contract services. Contract managers must monitor the contractor's performance and document accordingly.
- Document the nonperformance of contract services. If problems are encountered during the term of the contract, they should be fully documented. Letters to contractors should outline any problems related to substandard or non-performance. Use contract specifications verbatim in letters so that there is no doubt about the services covered in the contract. All letters about nonperformance should be sent by certified mail with copies to all concerned parties. A copy of the letter should be sent to the appropriate payment unit to eliminate the possibility of erroneous invoice payment.
- Oversee the completion of the contract. To finalize or complete the contract process, contact the contractor to determine whether all invoices have been received. Disencumber any remaining funds by notifying the appropriate payment unit by memo of the amount to be disencumbered. A copy should be retained in the contract file folder. If a computer file was used, close that file. Disencumbrance should be completed in a timely manner to release unspent funds for other purposes within the current fiscal year.
- Evaluate the contractor. Purchases over \$25,000 must report vendor performance on completion and submission to CPA of a Vendor Performance Form (VPF) within 30 days after completion of the contract (see Section 4.3 Forms).

### **Reporting Vendor Performance**

When an ordering entity first experiences a relatively minor problem or difficulty with a vendor, the entity will contact the subject vendor directly and attempt to informally resolve the problem. This includes failure to perform by the date specified and any unacceptable difference(s) between the purchase order and the merchandise received. The vendor is required to reply to the complaint within three (3) working days. Ordering Entities should stress to vendors that they should expedite correction of the differences because failure to reply may result in an unfavorable rating in the execution of the awarded contract.

If the vendor takes corrective action to the satisfaction of the Ordering Entity, then the Ordering Entity should file a Vendor Performance Form (VPF) with a satisfactory resolution code to give that vendor due credit for correcting the problem. If the vendor fails to respond satisfactorily, the ordering entity will file a VPF with the appropriate unsatisfactory resolution code selected to the CPA Vendor Performance Program. The CPA Vendor Performance Program resolves the complaint and documents the actions taken in the CPA's Vendor Performance Tracking System (VPTS). This documentation is used for future evaluations and awards to the vendor when vendor past performance has been listed in the solicitation as one of the "best value" criteria to be used in the awards process.

The steps in the reporting of vendor performance are:

- The Ordering Entity completes a VPF containing all pertinent and available information. The VPF can be submitted to CPA by logging on to the Electronic Business Daily (see Section 4.3 Forms).
- The CPA commences the vendor tracking process once the Ordering Entity has entered the complaint information and date received in the electronic database of the vendor's file.

A. Defer complaint for fourteen (14) calendar days awaiting response from vendor;

1. If vendor response is received the CPA Vendor Performance Coordinator will investigate the complaint if the vendor contests the information in the VPF.
2. If vendor fails to respond in the fourteen (14) calendar days, then the CPA Vendor Performance Coordinator will notify the vendor that it has failed to respond to a complaint and grant an additional five (5) business days to respond. Responses will be dealt with as above.

C. Upon final determination, the CPA Vendor Performance Coordinator will complete the VPF with appropriate resolution codes and finalize the report in the Vendor Performance Tracking System. The Procurement Director will enter final resolution data into vendor tracking system for update of vendor measurement.

### **Vendor Debarment**

Debarment as identified in this section means action taken by the Director of Procurement, to exclude individuals or firms from contracting with ordering entities for particular types of goods or services for specified periods of time. Debarment does not relieve the contractor of responsibility for existing obligations. The purpose of debarment is to protect the State of Texas from risks associated with awarding contracts to persons or firms having exhibited an inability or unwillingness to fulfill contractual requirements, and to protect state interests and the integrity of the state's procurement process by preventing individuals or firms who have displayed improper conduct from participating on state contracts for specific periods of time. The CPA will provide an up to date list of those firms and individuals that have been debarred. Ordering entities shall not award state contracts or subcontracting opportunities to debarred vendors.

## **Vendor Performance Codes**

### **DELIVERY ISSUES**

- |   |  |
|---|--|
| (005) Late Delivery                               | (008) Failure to deliver                 |
| (006) 1st Written notice issued for late delivery | (010) Delivery made at wrong destination |
| (007) 2nd Written notice issued for late delivery |  |

### **PERFORMANCE ISSUES**

- |  |   |
|--|---|
| (014) Failure to identify shipments per contract terms | (095) Failure to supply performance bond within required time |
| (016) Short/over weight or count                       |   |
| (018) Vendor shipped incorrect merchandise             | (100) Unsatisfactory installation                             |
| (020) Failure to replace damaged goods                 | (102) Service not performed within specifications             |
| (021) Slow replacement of damaged goods                | (110) Incorrect invoices                                      |
| (022) Failure to pick up incorrect shipment            | (111) Failed inspection (CPA use only)                        |
|  | (113) Failure to comply with terms/conditions of              |



(023) Improper product packaging	contract including reverse auction documentation (Give details below)
(024) Failure to follow palletizing instructions	(114) Failure to comply with requirements of HUB Subcontracting Plan (HSP) (Give details below)
(038) Poor product performance	
(040) Failure to promptly notify CPA/Agency/Co-op Member concerning manufacturer discontinuation of an item	(120) Failure to provide proof of insurance or maintain insurance
	(121) Failure to provide report(s)
(042) Repair parts not available	(122) Misrepresentation of qualifications (Give details below)
(050) Inspection - Random (CPA use only)	
(051) Inspection - Requested (CPA use only)	(123) Falsification of/fraudulent submittals (Give details below)
(052) Inspection - Receiving Agency	(124) Failure of workforce to meet specifications
(083) Failure to meet specifications (Give details below)	(125) Incorrect allocation of work (Give details below)
(085) Poor product quality	(126) Failure to respond to emergencies as required (Give details below)
(087) Failure to respond to letter, phone call, or email	(127) Failure to close out project as specified
(090) Poor customer service (Give details below)	(128) Certification not received on time
(091) Unauthorized substitution	(129) Failure to comply with code of conduct as specified
	(130) Other (Give details below)

## **RESOLUTION CODES**

### **Satisfactory Resolution Codes**

**(Does not negatively affect the score(s))**

(202) Complaint withdrawn (Give reason below)

(205) Item met specification via inspection

### **Unsatisfactory Resolution Codes**

**(Negatively affects the score(s))**

(201) Late Delivery

(206) Vendor failed to receive purchase order on time

(207) Delivery made after vendor was notified	(211) Damages Assessed
(208) Service met specifications	(213) Failure to pay assessed damages
(209) Performance corrected	(225) Shipment rejected (Give reason below)
(210) Material or item replaced	(228) Item canceled from contract (Vendor failure-vendor initiated)
(212) Equipment performance corrected	(229) Item canceled from contract (Vendor failure-state initiated)
(217) Performance bond received	(235) Entire contract canceled (Vendor fault)
(220) Invoice corrected	(237) Damages paid
(230) Item canceled from contract (No fault of vendor)	(253) Performance not corrected, CPA action taken (CPA use only - give reason below)
(234) Item/entire order canceled	(262) Order not complete (Give reason below)
(236) Entire contract canceled (No fault of vendor)	(263) Manufacturer fault (Give reason below)
(249) Order completed	(264) Resolved and documented (Vendor fault -give reason below)
(251) Correct shipment received	(265) Substitution not approved by awarding agency
(255) Substitution approved by awarding agency	(266) Item/entire order cancelled (Vendor fault)
(256) Insurance requirements received	(267) Delivery not corrected by vendor
(258) Certification received	(268) Hub Subcontracting plan rejected
(259) Resolved and documented (No fault of vendor - Give reason below)	(269) Failure to provide required documentation (vendor fault)
(260) Vendor failed to receive purchase order on time(Agency or postal fault)	(270) Vendor Failed to Respond to Complaint
(299) Other (Give reason below)	(298) Other (Give reason below)

## **EXCEPTIONAL PERFORMANCE**

(301) Shipment made early upon agency/co-op member request

(309) Provided technical/training/set-up assistance when not required

(303) Product upgrade substitution suggested and accepted at no additional cost to the agency

(311) Voluntary Price reduction for large order

(305) Exceptional customer service response

(399) Vendor commended

(307) Exceptional service provided for return of products

SECTION 2.50

REVISED DATE: 8/31/06

# Payment Assignments

## Assignment

An assignment is the legal transfer of a right or property. Usually, in business, an assignment is the transfer of the right to payment. An assignment involves at least two parties; the assignor and the assignee. The assignor is the party transferring the right to payment. The assignee is the party receiving the right to payment.

Once an agency receives a notice of a financial assignment, it is legally bound to make payment to the assignee. Assignments may be requested by the vendor to show changes in the payee on the appropriate order. Requests for assignments must be in writing from the vendor receiving the order; e.g. it must be on their **company letterhead with the signature of an authorized representative**. Secure a letter from the vendor requesting the name of the entity to be added to the PO as "assignee" for the vendor. Issue an assignment letter acknowledging the assignment. The vendor identification number (VID) will remain that of the original awarded vendor, but the vendor name and payments will be mailed to the assignee. (Reference TPIS Guide "How to set up Assignments" pages 230-233).

## Delegated Purchases

When a change is required on a delegated purchase, the agency must receive a letter from the original awarded vendor assigning the order to the new vendor, and a letter from the new assignee noting acceptance of the assignment. Once these letters have been received, then the form letter for Purchase Order Assignment (on the following page) may be used. Any reference to a CPA order number should be deleted. When applicable, a copy of this notice should be sent to the CPA Procurement Review section.

## Open Market Orders

In most instances, the vendor contacts the Comptroller of Public Accounts on purchases made through the CPA open market. The CPA purchaser who processed the order would then use the Purchase Order Assignment letter noting the CPA order number and agency requisition number.

## Term Contracts and Schedule Orders

The CPA makes the change on the term contracts and schedule orders. The vendor for these type of purchases contacts the CPA requesting the change. The CPA purchaser for that commodity then sends an assignment letter (noted on a following page) indicating the change with a copy sent to the agency.

**Note:** When making any assignment, the agency has the sole responsibility of setting up the assignment mail code (from the Comptroller's Office) so that the payment may be processed with the original awarded vendors VID.

## Company Name Changes

A Name Change can occur when the company is reorganized or wishes to change its name. An agency must secure a letter on company letterhead, from the original vendor stating the circumstance of the name change and the new name. The letter should be signed by an authorized representative, showing the change and when it became effective. A copy of the assumed name certificate filed with the Secretary of State Office and/or the county or a sales tax permit may be obtained as proof of name change. Then, issue a letter amending the PO to change the name and advise the company to contact the Comptroller's Office to set up new VID in order to secure payment. The purchaser should change the name on the PO file copy and acknowledge the name change.

## Buyout or Sale

A Buyout or Sale of a vendor occurs when a company is purchased by another company. The vendor of record needs to have the purchase order/contract amended to effect payment when the order is completed. An agency

must secure a letter from the original vendor stating the circumstances of the buyout/sale. If the vendor is already out of business, the agency should then obtain a letter indicating the sale of the company to the new vendor. Then issue a letter amending the purchase order/contract to change the name. Advise the new vendor to contact the Comptroller to secure a new VID in order to secure payment.

**Authority to Assign**

Generally, a person may assign the right to receive a payment from the state in the same way that a person may assign the right to receive a payment from a private person or entity (per the "State of Texas Purchase Voucher Guide"). Any questions should be directed to the Comptroller of Public Accounts, Claims Division at (512) 463-4850.

Vendor  
VID / FED ID #

Re: Purchase Order Assignment for  
Order No.:  
Requisition No.:  
Dated:

Dear

The (your entity's name) acknowledges the assignment for the referenced purchase order. Assignments do not change the terms and conditions of the transaction. In addition, the (your entity's name) will continue to hold your firm responsible for full performance as detailed in the purchase order.

The vendor name is amended to read:

- Assignee Company Name
- Assignee for (Vendor)
- Assignee Address
- VID #

By copy of this letter, the (ordering agency) is notified of this assignment and requested to amend the order accordingly.

Sincerely,

Approved: \_\_\_\_\_  
Purchasing Manager

\_\_\_\_\_  
Date

cc: Assignee  
Ordering Entity Purchasing Department  
Ordering Entity Accounts Payable Department

Vendor  
VID / FED ID #

Re: Term Contract Assignment for  
Class  
Contract  
Dated:

Dear

The (your entity's name) acknowledges the payment assignment for the referenced term contract. Assignments do not change the terms and conditions of the transaction. In addition, the (your entity's name) will continue to hold your firm responsible for full performance as detailed in the contract.

The vendor name is amended to read:

- Assignee Company Name
- Assignee for (Vendor)
- Assignee Address
- VID #

Please feel free to contact either of the undersigned parties should you have any questions.

Sincerely,

Approved: \_\_\_\_\_  
Purchasing Manager

\_\_\_\_\_  
Date

cc: Assignee  
Ordering Entity Purchasing Department  
Ordering Entity Accounts Payable Department

SECTION 2.51  
REVISED DATE: 06/98

# Prepayment & Advance Payments

Generally, prepayment is not authorized for any purchase of supplies, materials, equipment, or services. A hard copy purchase voucher still requires a signature on a certificate which states:

"I approve each purchase, travel, and payroll document in this batch. Employees at my state agency have determined that each document complies with applicable law, including the General Appropriations Act (GAA) and the rules of the Comptroller of Public Accounts. For each purchase of travel document, employees at my state agency have determined that: (1) the goods and services covered by the document comply with the requirements of the contracts under which they were purchased; and (2) the invoices for the goods and services are correct. For each transaction included in a travel document, employees at my state agency have determined that the information included in the transaction has been approved by the claimant. For each payroll document, employees at my state agency have determined that: (1) the payroll is correct and unpaid; and (2) any salary supplementation report required by the GAA to be filed with the Comptroller of Public Accounts and the Secretary of State has been filed. My state agency has authorized me to make this statement for the agency, and I accept responsibility for it."

In the Uniform Statewide Accounting System (USAS), certification is implied as having been signed when a document is released into the system for payment. There are certain exceptions contained in various statutes and manuals. (See Comptroller's publication "State of Texas Purchase Voucher Guide." The exceptions are listed as follows:

- Texas Government Code, Title 10, Subtitle D, Section [2155.386](http://tlo2.tlc.state.tx.us/statutes/statutes.html) (<http://tlo2.tlc.state.tx.us/statutes/statutes.html>)- "An institution of higher education may pay for library material before receiving them if reasonably necessary for the efficient operations of the institution's library."
- Texas Government Code, Title 10, Subtitle D, Section [2155.383](http://tlo2.tlc.state.tx.us/statutes/statutes.html) (<http://tlo2.tlc.state.tx.us/statutes/statutes.html>)- "All state agencies are authorized to make advance payments to federal and other state agencies for merchandise purchased from such agencies when advanced payments will expedite the delivery of the merchandise."
- A state agency may pay for goods and services before their delivery to the agency if there is legitimate public purpose. Purchase of library materials may require a down payment and percentage deposits during the life of the purchase if in accordance with the items listed above.
- A state agency may enter payment for rent (leases) in advance by setting the due date of the 23rd of previous month or later in Uniform Statewide Accounting System (USAS). The warrant will be issued on the first cycle after the due date. The use of future dates expands the time frame available to state agencies to enter their documents in USAS. **Note:** A Purchase Category Code (PCC) of Z must have a unique document number and cannot be mixed with other PCCs.
- A state agency may pay a subscription up to six weeks in advance of the renewal date;
- A state agency may pay a rental fee for a meeting room or exhibit booth (see Section 4.5 Exemptions for Policy Letter 97-1), or a registration fee in advance if there is a legitimate public purpose for making the payment in advance (e.g. significant cost savings of reserving a space when there is limited enrollment);
- A state agency may pay an annual maintenance agreement in advance, regardless of whether it covers more than one appropriation year. A state agency must charge a purchase for services to the fiscal year in which the services were rendered. In other words, a state agency may not charge a fiscal year for the purchase of services if the services were rendered during a different fiscal year; and

- A state agency may pay tuition to an institution of higher education no earlier than the 42<sup>nd</sup> day before the class begins. However, a state agency may not reimburse a state employee for tuition before the class begins.

A state agency that needs to make an advance payment for a reason not listed above may do so only if the agency determines before making the payment that making the payment in advance is necessary and would serve a proper public purpose.

**Note:** The Education Code specifically prohibits the expenditure of money in the Higher Education Assistance Fund (HEAF) to pay for goods or services before their delivery. None of the preceding exceptions apply to that provision.

**Legal Source:** [Texas Education Code Ann. 62.021\(a\) \(Vernon Supp. 2004\)](#).

SECTION 2.52

REVISED DATE: 06/06



# Early Payment Discounts

An early payment discount (also referred to as a cash discount) is a discount offered to the agency **if the payment is made within a specified period.** The CPA Rule 34TAC [20.36](#) states: "Cash discounts are acceptable but not considered in making an award. All cash discounts will be taken if they are earned by the agency".

This rule extends to all types of purchasing including term contract, open market, and delegated purchases. The CPA urges all agencies to pay invoices promptly and earn all discounts available.

SECTION 2.53

REVISED DATE: 06/06

# Late Payments

**Payment Deadline** A state agency's payment under a contract executed after July 1, 1986, but before September 1, 1987, is overdue by the **46th** calendar day and a state agency's payment under a contract executed on or after September 1, 1987, is overdue by the **31st** day after the later of the following:

- the date the agency receives the goods;
- the date the vendor completed performing its services for the agency; or
- the date the agency receives a correct invoice for the goods and services.

**Note: An invoice is considered “received” upon arrival to the billing address as listed on the Purchase Order.**

A payment under a contract executed on or after September 1, 1993, owed by a political subdivision whose governing body meets only once a month or less frequently is overdue on the **46th** day after the later event described above.

Effective September 1, 1999, the Comptroller's Office shall compute interest imposed on the state agency for late payment. The interest will be paid at the time the payment is made on the principal. The Comptroller shall also submit the interest payment with the net amount due for goods and services. The Comptroller or the state agency may not require a vendor to petition, bill, or wait an additional day to receive the interest due.

**Disputes Between State Agencies and Vendors** If a state agency believes that an invoice from a vendor is erroneous (e.g. the invoice does not match the items ordered/received, is not understandable, or does not reference the corresponding order number, the agency's full name, number and delivery address), the agency must notify the vendor in writing by the **21st** day after receipt of the invoice. If a dispute between a state agency and vendor is resolved in the vendor's favor, the agency is liable to the vendor for interest on the invoice. This interest must be calculated from the original due date of the payment, as if no dispute ever existed. If a dispute between a state agency and a vendor is resolved in the agency's favor, the vendor must submit a corrected invoice to the agency.

**Example of How to Calculate Interest** - In this example, the following assumptions apply:

- a state agency executed a contract with a vendor to purchase goods on September 10th;
  - the goods were received September 24th;
  - the agency received the vendor's invoice on October 6th;
  - the agency's payment was postmarked December 9th; and
  - the amount of the agency's payment was \$500.00.
  - annual percentage rate of 7.25% to calculate late payment interest
1. Determine the due date for the payment. Count 30 days beginning on the day after the agency received the invoice. In this example, the due date was November 5th.

2. Determine how many days the payment was late. Start counting on the day after the due date and stop counting on the date the payment was postmarked. In this example, the payment was late by 34 days.
3. Use the following formula to determine the amount of interest due:  $(\# \text{ of days late} / 365) \times (.0725) \times (\text{amount of payment}) = (\text{interest due})$
4. In this example, the formula becomes:  $(34 / 365) \times (.0725) \times (\$500.00) = \underline{\underline{\$3.38}}$

**Exemptions** The requirements described in this section do not apply to a payment by a state agency if:

- the terms of a federal contract, grant, regulation, or statute prevent the agency from making a timely payment with federal funds; or
- the invoice is not mailed to the agency in strict compliance with the instructions, if any, on the purchase order covering the payment.

Any additional questions should be directed to the Comptroller of Public Accounts, Claims Division, at (512) 463-4850.

**Legal Source:** Texas Government Code, Title 10, Subtitle F, Section [2251.021](http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm)  
(<http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm>)

SECTION 2.54

REVISED DATE: 08/23/06

# Deposits

A number of consumable products are sold either packed or stored in reusable containers. Often a separate container deposit is required. The Comptroller of Public Accounts does not consider these charges in its evaluation if the total deposit is to be refunded upon return of the container.

The CPA will show the deposit amount on the purchase order. Return transportation will also be included in the original purchase price, unless otherwise shown on the purchase order or contract notice.

The ordering entity should return the container and collect the deposit. When submitting payment through the USAS system the deposit should be referred to as "**demurrage**" (per the Comptroller of Public Accounts, Claims Division). Listed below is sample language used in CPA bid specifications for deposits:

**"If returnable \_\_\_\_\_ is bid, please quote \_\_\_\_\_ deposit separate from the price of the above material.  
The \_\_\_\_\_ deposit is to be refunded to the (agency) upon return of the \_\_\_\_\_ for \$\_\_\_\_\_. The  
\_\_\_\_\_ may be picked up by the vendor or it will be returned freight collect."**

SECTION 2.55

REVISED DATE: 06/98

# Taxes, Fees, Surcharges

## State and Local Taxes

The State of Texas is exempt from paying certain taxes such as state and local (City, Transit Authority, etc.) sales tax.<sup>1</sup> During the solicitation process, the ordering entity shall notify the bidders that purchases made for the state are not subject to Texas sales tax. Taxes of other states are not applicable if F.O.B. destination in Texas is specified.

Use the following suggested language in your solicitations:

**“Purchases made for state use are exempt from the Texas state sales tax, and certain purchases are exempt from federal excise tax.”**

In addition, Comptroller of Public Accounts recommends that a tax exempt statement appear on the front of each purchase order.

In situations where solicitations require both labor and materials, the state is exempt from the tax paid by the vendors on behalf of the state, for the incorporated materials they supply when performing a labor and materials contract job. The vendor must ALWAYS pay the tax unless the materials will be used entirely for the state's project. Vendors must pay tax on the purchase and rental of equipment, accessories and repair and replacement parts for equipment. <sup>2</sup>

## Federal Taxes

The State of Texas is exempt from paying federal excise taxes for specified commodities. Use the following suggested language in your solicitations if applicable:

**"Generally, the State of Texas is exempt from Federal Excise Taxes. However, the State of Texas is not exempt from Federal Excise Taxes for certain purchases, i.e. vaccines."**

## Taxes, Fees and Surcharges Paid by the State

**Telecommunication Services** - Current information regarding taxes, fees, and surcharges on telecommunication services is available on the Department of Information Resources' website.

**State Motor Fuels Tax** - Agencies are required to pay the state motor fuels tax on gasoline and diesel fuel. However, agencies holding either a Dyed Diesel Fuel Bonded User permit or Dyed Diesel Fuel Signed Statement registration are not required to pay the state motor fuel tax on dyed diesel fuel purchased for use in off-highway equipment. State agencies may request a refund of state motor fuels taxes paid on gasoline and diesel fuel used in off-highway equipment. Agencies should contact the Comptroller of Public Accounts for information on obtaining a diesel fuel permit or requesting a refund.

## **Tax Exemption Certificates**

State and Federal Tax Exemption Certificate forms are available in the [Procurement Forms Library](#) on the CPA website.

### **Legal Authority:**

<sup>1</sup>[Texas Tax Code, Section 151.309 \(4\)](#)

<sup>2</sup>[Texas Tax Code, Section 151.311](#)

SECTION 2.56

REVISED DATE: 09/23/06

# Paying for Purchases

The payment of invoices for purchases is accomplished through the Uniform Statewide Accounting System (USAS). The preparation of transactions (vouchers) for payments must be handled in accordance with the Comptroller of Public Accounts' "The State of Texas Purchase Voucher Guide" and the USAS User Manual.

## **USAS Requirements:**

USAS is a computerized accounting system for the State of Texas. USAS provides both GAAP (Generally Accepted Accounting Principles) and accrual accounting, and satisfies state accounting requirements. USAS captures accounting activities supplied by state agencies and institutions of higher education. Financial data in USAS is used by the Comptroller of Public Accounts to produce state payments, agency reports, and reports for appropriation management and statewide budgets. USAS also performs specialized functions, such as budgetary and encumbrance accounting, indirect costs allocation, payment processing, and document tracking.

The following elements are required on the payment voucher for payment processing in USAS:

- Agency Requisition and/or Purchase Order Number;
- CPA Purchase Order Number (if applicable);
- Vendor Name and Identification Number;
- Purchase Category Code (PCC) - see Section 2.61 Purchase Category Codes (PCC) ;
- Lease Number (Real Property Lease Payments);
- Service Beginning and Ending Dates;
- Description of Purchase;
- Total or Estimated Dollar Amount; and
- Final Approval Signature on Signature Card filed with the Comptroller's Office.

## **CPA Requirements:**

In addition to the fiscal data listed above, the following elements are required on the purchase requisition or purchase order for payment processing and Procurement Review audit:

- Commodity Class and Item Number;
- Order/Estimated Delivery Date;
- Authorized Purchasing Representative Signature.

**FUNDING:** The following statement is required on the purchase order if a purchase or service transcends a biennium: **"This contract is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature."**

For questions on status of payment(s), call the Comptroller of Public Accounts, Claims Division at (512) 463-4850 or inquire on-line in USAS on screen D37.

## **Vendor Invoices**

The vendor is required to submit all the necessary data on the invoice to the agency in order to expedite the payment.

(a) To receive payment, vendors must submit an invoice to the state agency receiving the goods or services. The invoice should include, but is not limited to include:

- (1) the vendor's mailing and email (if applicable) address;

- (2) the vendor's telephone number;
- (3) the name and telephone number of a person designated by the vendor to answer questions regarding the invoice;
- (4) the state agency requisition number;
- (5) the state agency's name, agency number, and delivery address;
- (6) the state agency's purchase order number, if applicable;
- (7) the contract number or other reference number, if applicable
- (8) a valid Texas identification number (TIN) issued by the Comptroller of Public Accounts;
- (9) a description of the goods or services, in sufficient detail to identify the order which relates to the invoice;
- (10) unit numbers corresponding to the original order' and
- (11) other relevant information supporting and explaining the payment requested or identifying a successor organization to an original vendor, if necessary.

SECTION 2.57

REVISED DATE: 08/23/2006



## **Fiscal Year-End Purchases**

### **Comptroller of Public Accounts (CPA) Fiscal Year-End Determination**

The state fiscal year starts on September 1st and ends on August 31st of each year. State funds are appropriated by the Texas Legislature on a biennial basis. The CPA establishes guidelines and rules for how and what money is charged to a specific fiscal year.

When submitting a request for payment, the ordering entity must designate which fiscal year will be charged for the purchase. This is necessary because three appropriation years (five for construction, repair, or remodeling appropriations) are always available to be charged for any purchase.

There are different criteria for payments of consumables, services, capital assets, and mixed purchases. The general requirements below reflect current CPA policies and procedures. For further clarification, refer to your fiscal office or CPA's State of Texas Purchase Policies and Procedures Guide.

#### **Consumables**

An ordering entity must charge a purchase of consumables to the appropriation year in which the delivery of the consumables occurred and they are reasonably expected to be consumed.

#### **Services**

An ordering entity must charge a purchase of services for the appropriation year in which the services were rendered.

#### **Capital Assets**

Capital assets are real or personal property that have an estimated life of greater than one year. When an ordering entity purchases a capital asset, the entity may charge the purchase to any appropriation year or combination of appropriation years that are in existence on the date that the ordering entity enters into the purchase contract. The delivery date of a capital asset is never a relevant factor when determining the appropriation year that must be charged for the purchase of the asset.

#### **Mixed Purchases**

May involve the purchase of a combination of consumables, services and capital assets. The appropriation year principles are determined by the dominant purpose of the contract. For example, if the dominant purpose of the mixed contract is to purchase services, then the appropriation year determination principles for services would govern the entire purchase.

### **Exceptions to the Appropriation Year Determination Procedures**

#### **Seminars and Conferences**

Except as discussed in the next sentence, a state agency may use money appropriated for a particular fiscal year to pay expenses related to conducting or attending a seminar or conference only to the extent it occurs during that fiscal year. To the extent that it is cost-effective, a state agency may use money appropriated for a particular fiscal year to pay expenses related to conducting or attending a seminar or conference that will occur partly or entirely during a different fiscal year.

### Periodical subscriptions, maintenance contracts, post office box rentals, insurance, and surety or honesty bonds

A state agency may use money appropriated for a particular fiscal year to pay the entire cost or amount of a periodical subscription, a maintenance contract, a post office box rental, insurance, or a surety or honesty bond, regardless of whether it covers more than one fiscal year.

### Utility Services

A state agency may use money appropriated for a particular fiscal year to pay for a utility service provided during that fiscal year and September of the next fiscal year. The applicable statute specifically defines “utility service” to mean:

- The furnishing of electricity, water, or natural gas; or
- A telecommunications service, a wastewater treatment services, or a waste disposal service; or
- Any similar commodity or service that the Comptroller considers to be a utility service.

Additional information is provided in the CPA’s State of Texas Purchase Policies and Procedures Guide.

**Note:** See Section 2.52 Prepayment & Advance Payments for allowable advance payment exceptions.

### CPA Procedures for Open Market Fiscal Year-End Purchases

See Section 2.8 Open Market Purchases

### Funds Which Revert

Ordering entities may have appropriated funds which revert to the state's fund at the end of the fiscal year. If an order is to be paid with funds which revert at the end of a fiscal year, the ordering entity should note on the requisition **"To be paid with funds which revert at the end of this fiscal year."**

Requisitions requiring delivery on or before August 31st must include a similar notation. The requisitions with either of these notations will be given priority for processing. The CPA deadline for receipt of open market requisitions is approximately eight to ten weeks prior to the end of the fiscal year. Current fiscal year requisitions received after this deadline will be processed only if the CPA determines there is sufficient time to process the purchase order.

### Next Fiscal Year Funds

For requisitions to be paid with funds from the next fiscal year, the ordering entity should note the following on the requisition:

- New fiscal year requisition number; and
- The statement: **"Goods are to be Delivered and Invoiced after September 1, 2XXX."**

### CPA Procedures for Re-Award of an Order Using Prior Fiscal Year Funds

This procedure involves the cancellation of the purchase for capital assets. A purchase order using prior year funds is allowed when a prior year order is canceled for reasons which are not within the control of the ordering entity or CPA, i.e., such as a vendor's default for inability to deliver, meet performance or specification requirements. Please note the following:

If it is necessary to cancel and re-award an order for a capital asset item, the ordering entity shall request and justify the action as being in the best interest of the state. The CPA:

- May proceed to cancel and re-award the order or cancel and re-advertise the purchase (as appropriate for the situation); and
- Will use the original requisition number and issue a new purchase order number for the previous fiscal year with the current date.

Since the original purchase order was executed in the prior fiscal year, the ordering entity may use prior fiscal year funds to pay for the purchase. If the amount of the re-award exceeds the amount of the original award, the difference will be charged to the current year's appropriations. See Section 2.24 Excess Obligations Prohibited for information on excess obligations.

Section 2.58

REV. 5/29/03

# The State Payment Card PCC - H

**Introduction** State agencies may only use credit cards issued under a contract between CPA and a card issuer or a contract between an institute of higher education and a card issuer<sup>1</sup>. CPA has established Term Contract [946-A1 PAYMENT CARD SERVICES](#)<sup>2</sup> for credit card services<sup>3</sup>.

**Participating in the Payment Card Services Contract** Follow these instructions to participate in Term Contract [946-A1 PAYMENT CARD SERVICES](#):

1. Adopt procedures governing the issuance and security of payment cards and the use of those cards by your agency's officers and employees. File and maintain these procedures in your agency's Procurement Plan. These procedures must be available to the office of the Texas Comptroller of Public Accounts upon request<sup>4</sup> and CPA requires them as a part of its procurement audit requirements.
2. Submit a requisition to CPA against Term Contract [946-A1 PAYMENT CARD SERVICES](#). See Section 2.7 Term Contracts for more information on using Term Contracts.
3. Forward your agency's internal credit card procedures to CPA Procurement Audit for inclusion in your agency's Procurement Plan.

**Using the Payment Card** The payment card may be used to pay for commodities and services for dollar amounts within your agency's delegated purchasing authority. Make certain that you:

1. Adhere to all purchasing statutes, rules, policies, and procedures when using the payment card. *The use of a payment card does not automatically exempt a state agency, its officers or its employees from any purchasing requirement of state law or CPA*<sup>5</sup>.
2. Keep all payment card receipts in your procurement files. Each receipt must contain a description of the good or service that is sufficient to support the office of the Texas Comptroller of Public Accounts expenditure object code used. Credit card receipts must be made available to the office of the Texas Comptroller of Public Accounts upon request<sup>6</sup>.

The payment card may be used to pay for capital or controlled assets, but any capital asset payment must be coded to the object code established for the type of items being purchased. Also, the Texas Identification Number/Payee Identification Number/Vendor Identification (TIN/PIN/VID) of the vendors from whom the purchases were made must be entered into USAS instead of the TIN/PIN/VID of the credit card issuer.

## **Prohibited Uses of the Payment Card**

Per Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter E, Section [5.57](#)(g), a participating state agency may not use a procurement card and may not reimburse an officer or employee for the use of a procurement card for:

- A purchase of a personal nature or any other purchase not connected with official state business.

- A cash advance.
- A purchase of a consulting service.
- A purchase of a good or a service that may not be purchased without the prior approval of another state agency, including purchases that require a pre-audit by CPA or the office of the Texas Comptroller of Public Accounts
- A purchase that the office of the Texas Comptroller of Public Accounts audits before payment.
- A purchase from a vendor if a payment to the vendor is prohibited by:
  - o Government Code, [§403.055](#) or [§2107.008](#).
  - o Education Code, [§57.48](#), or [§57.482](#).
  - o Family Code, [§231.007](#).

Furthermore, a participating state agency may not use a procurement card and may not reimburse an officer or employee for the use of a procurement card for:

- A purchase that violates any provision of the General Appropriations Act regarding the occurrence of excess obligation provisions<sup>7</sup>.
- [CPA Travel Management Program](#) contract airfares<sup>8</sup> and other travel expenses as indicated in Term Contract [946-A1 PAYMENT CARD SERVICES](#).
- Purchasing automotive fuel<sup>9</sup>.

### **Paying the Payment Card Issuer**

State agencies are required to pay a Payment card contractor through an electronic funds transfer<sup>10</sup>. Procurement card statements are to be paid in full, less credits or disputed transactions, within 30 days of receipt, per the Texas Prompt Payment Act. Payments processed within the Prompt Payment Act<sup>11</sup> requirement qualify for a rebate payment to the state. A participating state agency *may not accept a cash refund* for a purchase if the agency paid for the purchase with a payment card<sup>12</sup>. **Liability** Participating agencies may be liable for late payment fees and transactions charged to lost and stolen cards if lost or stolen cards are not reported immediately. See Term Contract [946-A1 PAYMENT CARD SERVICES](#) for the specific terms.

### **Historically Underutilized Business (HUB) Reporting and 1099 Reporting**

To receive HUB credit for procurement card purchases, submit a HUB Subcontracting report per the instructions provided in Term Contract [946-A1 PAYMENT CARD SERVICES](#), link titled [Smart Data On-Line - HUB, 1099, SDB Exports Guide \(2-18-04\)](#)<sup>13</sup>. Smart Data Online is a reporting system created by the current contractor and MasterCard to provide unique reporting requirements for the State of Texas. These include:

- HUB Exports • 1099 Exports • Small & Disadvantaged Business (SDB) Exports (pertain only to federal funds)

These file exports were developed to provide each participating agency with accurate and complete procurement card data needed to prepare reports.

<sup>1</sup> Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter E, Section [5.57](#) (e)(5)

<sup>2</sup> [http://www2.cpa.state.tx.us/cat\\_page/cat\\_946\\_a1\\_0306.html](http://www2.cpa.state.tx.us/cat_page/cat_946_a1_0306.html)

<sup>3</sup> The authority to establish this contract is provided by Texas Government Code, Title 10, Chapter 2155, Section [2155.385](#), Texas Government Code, Title 4, Chapter 403, Section 403.023(b) and Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter E, Section 5.57.

<sup>4</sup> Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter E, Section [5.57](#)(f)

<sup>5</sup> Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter E, Section [5.57](#)(h)

<sup>6</sup> Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter E, Section [5.57](#)(q)(2)

<sup>7</sup> Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter E, Section [5.57](#)(p)

<sup>8</sup> Texas Administrative Code Title 34, Part 1, Chapter 20, Rule [20.308](#)

<sup>9</sup> 2003 State Vehicle Fleet Management Plan, p. 8. The State Vehicle Fleet Management Plan is mandated by Texas Government Code Chapter 2171, Subchapter C, Sec. [2171.104](#)

<sup>10</sup> Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter E, Section [5.57](#)(i)

<sup>11</sup> Texas Government Code, Title 10, Chapter [2251](#)

<sup>12</sup> Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter E, Section [5.57](#)(j)

<sup>13</sup> [http://www2.cpa.state.tx.us/cat\\_page/946\\_a1\\_SDOL\\_HUB.doc](http://www2.cpa.state.tx.us/cat_page/946_a1_SDOL_HUB.doc)

SECTION 2.59

REVISED DATE: 8/31/06

# Action Codes

## CPA Pre-Audit Action Codes Used for USAS

<u>Code</u>	<u>Description</u>
801	Contract with listed requisition number is not on file at CPA
802	Proprietary (2155.067) justification needed at CPA
803	Emergency Justification (2155.137) needed at CPA
804	CMBL, with HUB information, needed at CPA
805	No action by CPA, at agency request
806	Purchase Order needed at CPA
807	Bid tabulation needed at CPA
808	Copy of bids needed at CPA
809	Copy of specifications and/or terms and conditions needed at CPA
810	Approved - audited by CPA as document type 3
811	Purchase documents needed at CPA. See descriptive/legal text (DLT)
812	Payee (VID) not the same as on Purchase Order/Lease
813	Purchase category code (PCC) not correct.
814	Document type not correct.
815	CPA Term Contract Item - Not a delegated purchase
816	Purchase Contract/Lease expired - See descriptive/legal text (DLT)
817	Payment period (from/to) dates not listed
818	Lease payment for month approved on a previous document
819	Lease payment being held until the 23rd of the month if Due date not used
820	Lease payment amount does not agree with amount on lease
821	Lease amendment not approved or not on file
822	Other - other codes are not applicable - see descriptive/legal text (DLT)
823	CPA lease number not listed
824	Lease number referenced is not on file

Explanation of any action codes is available on USAS Screen D44, Action Code Profile. Any questions should be directed to the CPA Procurement Review Section at (512) 463-3242.

If payment is not approved, the CPA Procurement Review Auditor will enter the action code and the explanation in DLT. This will be followed up with a telephone call to the agency contact person.

SECTION 2.60

REVISED DATE: 06/98



# Purchase Category Codes (PCC)

The following Purchase Category Codes (PCC) are for use in the Uniform Statewide Accounting System (USAS) with document type two (2). PCCs are codes used to document the purchase method, commodity type, and dollar category of purchases.

USAS Document type two (2) and nine (9) are post audited after payment. Document Type nine (9) does not require a requisition number or a PCC.

## **Document Type Two (2)**

**A** - Purchases of items from CPA term contracts using the CPA automated purchasing system (Automated purchase orders) or the Contract Purchase Requisition form sent in to CPA for data entry into the system. See CPA Rule 34TAC [20.40](#) - CPA Term Contract Purchase.

**B** - A purchase with a pre-scheduled bid opening date, allowing CPA to confirm orders for goods (e.g., calendars, groceries, fertilizer, etc.). see [Section 2.9 on Scheduled Purchase Contracts](#).

**C** - Purchases from CPA Non-Automated term contracts using the hard copy requisition/purchase order forms rather than the automated purchasing system (PCC A), e.g. custom blank forms, custom printing on envelopes, paper, etc. See CPA Rule 34TAC [20.40](#) - CPA Term Contract Purchase.

**D** – Purchases of information technology commodities or services not available through DIR contracts. CPA Rule 34TAC [20.391](#) – Request For Offer Purchase Method.

**E** - Purchases of commodities and services when the total purchase is estimated to be \$0.00 to \$5,000.00. See CPA Rule 34TAC [20.41](#) - Delegated Purchases.

**F** - Purchases of commodities (not services) in the total estimated amount of \$5,000.01 through \$25,000.00. See Rule 34TAC [20.41](#) - Delegated Purchases.

**G** - Purchases on the Open Market by CPA. A purchase of goods, usually in a specified quantity, made by buying from any available source in response to an open market requisition from an agency. Items are not on CPA term contract. See CPA Rule 34TAC [20.33](#) through [20.40](#) - CPA Open Market Purchase.

**H** - Purchases in any category paid for with a procurement card. Agencies using a procurement card from CPA term contract for commodity class 946-A1. See CPA Rule 34TAC [20.41](#) - Delegated Purchase.

**I** - Purchases of items from DIR Contracts. See Texas Government Code, Chapter [2157](#) - Purchase of Automated Information Systems.

**K** - Purchases of publications directly from the publisher with no dollar limits. See CPA Rule 34TAC [20.41](#) (e) (5) Delegated Purchases; Publications. Required documentation - The purchase order or requisition file must contain the following signed declaration:

**"Not available from any other source."**

No proprietary justification or best value statements are required if the signed declaration is listed on the purchase order/requisition.

**Note:** Purchases for Libraries are exempt [[see Section 4.5 Exemptions](#)]. These type of exempt purchases should be coded Document type 9 and do not need a PCC code.

**L** - Purchases of perishable foods, e.g. fresh fruit, eggs, ice, etc. with no dollar limits. See CPA Rule 34TAC [20.41](#) - Delegated Purchases.

**M** - Purchases of distributor items, e.g. repair parts for a unit of major equipment that are needed immediately, or maintenance contracts for laboratory/medical equipment with no dollar limits. See CPA Rule 34TAC [20.41](#) - Delegated Purchases.

**P** - Purchases of petroleum products, e.g. fuels, oils, and greases - (class 405) with no dollar limits. See CPA Rule 34TAC [20.41](#) - Delegated Purchases.

**Q** - Purchases of services in the amounts estimated to be \$5,000.01 but less than \$25,000.00 for the total contract within a one year period. See CPA Rule 34TAC [20.41](#) - Delegated Purchases.

**X** - Purchases of items from TXMAS Contracts. See CPA Rule 34TAC [20.47](#)– Multiple Award Schedule.

**S** - Purchases of services in an amount estimated to exceed \$25,000.01 for the total contract within a one year period. See CPA Rule 34TAC [20.41](#) - Delegated Purchases.

**T** - Emergency purchases of goods and services exceeding \$25,000. An emergency is defined as a situation requiring the state agency to make the procurement more quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state. See CPA Rule 34TAC [20.32](#) and [20.41](#)(a) (2) - Emergency Purchases.

**J, N, O, R, U, V, W, Y, Z** - Not Used.

### **Document Type Nine (9)**

This document type is for the purchases of goods and services exempt from competitive bidding or from the purchasing authority of the CPA by a specific statute. The agency requisition number/order number and PCC are not required. The legal cite must be referenced on the purchase documentation for these purchases. Items purchased from CPA term, open market, and schedule orders are not exempt. Please refer to the section on Exemptions for a list of some exemptions.

SECTION 2.61

REVISED DATE: 09/2007

# Disposal of Property

## **Surplus Property**

The Comptroller of Public Accounts (CPA) coordinates the disposal of state surplus property to comply with Texas statutes. Property is declared surplus by each agency's property management area utilizing the State Property Accounting (SPA) System of the Comptroller's office.<sup>1</sup>

Initially state surplus is made available to state agencies, political subdivisions, and assistance organizations for a 10-business day period, see Section 2.1 Acquisition of Surplus Property. Following the 10-business day period, property that is not sold or transferred to a qualified entity is scheduled for public sale through CPA. State agency property managers, working with CPA State Surplus Property staff, code surplus property in the SPA system according to the most appropriate sales method: live auction, Internet sale, sealed bid or sale at a CPA operated retail storefront.

The State of Texas operates State Surplus Storefronts open to the public in the following locations:

### **Austin District**

6506 Bolm Road  
Austin, Texas 78721  
Phone: 512-463-1990

### **Fort Worth District**

2826 North Beach Street  
Fort Worth, TX 76111-6201  
Phone: 817-831-6767

### **San Antonio District**

2103 Ackerman Road  
San Antonio, TX 78219-3017  
Phone: 210-661-2381

Inventories can be found at the Surplus Property section of the CPA website under Retail Store/Locations and Inventories.

For additional information, call the Surplus Property Program at 512-463-2688.

Legal Authority:

1 - Texas Government Code, Title 10, Subtitle D, Chapter [2175](#)

SECTION 2.62

REVISED DATE: 04/25/06

# General Audit Procedures

[Texas Government Code, Title 10, Subtitle D, Section 2155.325](#) and [CPA Rule 34TAC 20.48](#), authorizes the CPA to perform audits on documents submitted into the Uniform Statewide Accounting System (USAS).

Basic procedures that apply to auditing all types of delegated and non-delegated payment processes are described in the following sections. Audits are post-procurement and payment documents. [See Section 2.61 Purchase Category Codes](#) (PCC) of the Procurement Manual for a list of the Purchase Category Codes (PCC) identifying these payments.

## **Determining the Procurement and Payment Procedure Applicable to the Purchase.**

1. Determine the estimated dollar amount of the purchase.
2. Establish the commodity class and item number [[see NIGP commodity book](#)]. CPA uses the National Institute of Governmental Purchasing (NIGP) Commodity Book that numerically classifies supplies, equipment, materials and services based on class and item. The class and item code is required on the Purchase Order.
3. Check purchasing procedures based on commodity class and item, relevant dollar threshold and procurement method.
4. Consult the TDCJ/Texas Correctional Industries (TCI) catalogue [[see Section 2.5 Special Purchases](#)]. The Texas Council for Purchasing from People with Disabilities (currently TIBH) catalogue.
5. State Term Contracts [[see Section 2.7 Term Contracts](#)].
6. Non-Competitive Purchases - Purchases less than \$5,000
7. If AIS (Automated Information Systems) Telecom related purchases, [[see Section 2.12 Automated Information Systems/Telecom Commodities and Services Purchase](#)]
8. If blanket or other DIR exemptions apply, use new procedure under [34TAC § 20.391](#)

## **Competitive Bid Purchases:**

- Purchases between \$5,000 to \$10,000 require informal bids. Obtain 3 telephone bids from vendors on the CMBL with 2 bids from the CPA certified HUB list. May also be supplemented by non-CMBL vendors. [[See Section 2.33 Centralized Masters Bidders List](#) and [Section 2.8 Informal Telephone Bid](#)].
- Purchases between \$10,000 to \$25,000 require formal bids. Obtain 3 written bids from vendors on the CMBL with 2 bids from the CPA certified HUB list [[see Sections 3.0 General Audit Procedures and 2.8 Formal \(Written\) Bids Invitation For Bid \(IFB\)](#)].

- Purchases of services exceeding \$25,000 require formal bids from all eligible vendors on the CMBL serving your agency's geographic area [see Section 3.0 General Audit procedures and [Section 2.8 Formal Written Bids \(Invitation for Bid\)](#)].

There are two types of bid tabulations: an informal bid tabulation and a formal bid tabulation. The type of bid tabulation used is determined by the procedure used to obtain bids, either informal bids (such as bids taken over the telephone) or formal bids (such as written bids or an Invitation for Bid – IFB). The type of bid procedure dependent upon the estimated or total dollar amount of the purchase and the class and item

Requirements for an Informal Bid Tabulation (see Section 2.8 Informal Telephone Bids)

- CMBL/HUB bidders contacted (vendor's name);
- Name of person contacted and their telephone number;
- CPA certified HUB ethnicity/gender source statements
- Bid amounts;
- All responses (include no bids or no responses); and
- Indicate awarded vendor.

Requirements for a Formal Bid Tabulation (see Section 2.8 Formal Written Bids Invitation For Bid (IFB))

- When the CMBL mailing list is used (from the Internet), the HUB ethnicity and gender source statements will be indicated. If you are using the CMBL mail label list, you must still indicate the HUB source statements on the bid tabulation;
- All responses - dollar amount, no bid, or no response;
- Reason for rejection of any bid; and

**Note:** There should be one of these responses for every vendor on the bidders mailing list from the CMBL/CPA certified HUB list.

- Indicate the awarded vendor and issue a purchase order or notice of award.

SECTION 3.0

REVISED DATE: 09/2007

## Pre-Payment & Procurement Audits

Document type 3, (PCC R, S, T and Z) is audited by Comptroller of Public Accounts prior to payment by. Payments are released within eight days after the agency has entered these documents into the Uniform Statewide Accounting System (USAS) and CPA has received the purchasing documentation for compliance with applicable purchasing statutes and CPA rules. Institutions of higher education should also submit research (PCC R) purchasing documentation for procurements of goods and services exceeding \$25,000 (see Section 2.11 - Delegated Purchases). Service contracts (PCC S) estimated to exceed \$25,000 per year and emergency purchases (PCC T) for goods and services estimated to exceed \$25,000 are also pre-audited Purchasing documentation for document type 3 contracts should be sent to the CPA, Procurement Review Section, 1711 San Jacinto, Room 304, Austin, TX 78711 immediately after the award.

The complete purchasing package serves as the link from the purchase to the payments transaction in the CPA files and/or the agency's files. These elements also provide the required auditing trail from the agency's internal requirements and encumbrances through the final payment to the vendor and should include the following list of items:

1. Purchase order/requisition issued;
2. Contract number/requisition number;
3. Vendor name, identification (VID or TIN) number and address;
4. Description and specifications of items or services procured,
5. Contract start and end dates (estimated for emergency purchases);
6. Total or estimated contract dollar amount;
7. Signature(s) of authorized purchasing representative(s);
8. Commodity class and item number;
9. Emergency justification letter (if applicable);
10. Proprietary justification letter (if applicable);
11. CMBL bidders mailing list;
12. Historically Underutilized Business (HUB) source statements;
13. Bid tabulation sheet;
14. Formal or informal written bids (where applicable);
15. CPA Review of Specifications for service contracts exceeding \$100,000 per year (when CPA has delegated the purchase back to the agency);
16. Good Faith Effort (GFE) for contracts exceeding \$100,000 per year; and
17. Purchase Category Code (PCC).
18. Verification of Texas Market Place posting.
19. Verification of Franchise Tax certification of good standing.

For Lease payments (PCC Z), the following items are verified: the vendor name and identification number, the payment amount (including any CPI increases), the payment period, and the lease number. The lessor's name should match the name entered in the CPA leasing system.

**Note:** All reports are kept for twelve months. When auditing printing of publication purchases, a receipt showing deposit at the State Library may be required.

# Pre-Payment & Procurement Audit Compliance Check List

Agency: \_\_\_\_\_ Contract # \_\_\_\_\_  
+2nd Contract # \_\_\_\_\_ Class & Item \_\_\_\_\_  
Vendor Name: \_\_\_\_\_  
Vendor ID # \_\_\_\_\_  
Begin Date \_\_\_\_\_ End Date \_\_\_\_\_  
Amount \$ \_\_\_\_\_ # of Bids \_\_\_\_\_  
Compliant Y/N Proprietary Y/N Research Y/N  
Renewal Y/N \_\_\_\_thru \_\_\_\_\_ Emergency Y/N \_\_\_\_

When Non-Compliant Circle Corresponding Code(s) Below:  
Amplify w/ I-Insufficient, M-Missing, S-Signature, and O-Other

A	Formal Written Bids
B	Emergency Justification
C	Bidder Ethics Statement
D	Bidder Mailing List from CMBL
E	Order Expired
F	Bid Tabulation
G	Best Value Statement
H	Bid Opening After Start of Order
I	Beginning and/or Ending Date Not Shown on Order/Bid
J	Bid Opening Date, Place, Time (Physical Location)
K	Funding Out Clause/Excess Obligations Clause
L	Purchase Order/Internal Requisition
M	Proprietary Letter of Justification
N	Open Ended Renewal Clauses (Must have Beginning and Ending Dates)
P	HUB Vendors and/or Source of HUB statement
Q	Texas Family Code Clauses
R	CPA Review of Specifications/RFP Approval
S	Non-Delegated Purchase
T	Bidder Affirmations 10.1 - 10.8
U	Texas Resident Bidder Statement
V	Texas Franchise Tax Statement
W	Texas Marketplace Posting
X	Authorized Purchasers Signature/Approval
Y	Agency Notified by Letter
Z	Other Situations (Amplify)

Remarks: \_\_\_\_\_

\_\_\_\_\_

Agency Contact: \_\_\_\_\_ Phone # \_\_\_\_\_

Audited By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Date Entered: \_\_\_\_\_ Initials : \_\_\_\_\_

## Auditing the Purchase Documentation

**Key to Pre-Payment & Procurement Audit Compliance Checklist (reference the appropriate Sections in the CPA Procurement Manual)**

<b>Non-compliance Codes</b>	<b>Requirement</b>	<b>Action</b>
<b>A - Formal Written Bids</b> Re: Section 2.35	Must use entire CMBL for purchases over \$25,000	Check for emergency justification when three bids are not obtained or entire CMBL was not used. Applicable to Services over \$25,000. Notify agency and code non-compliant.
<b>B - Emergency Justification</b> Re: Section 2.18	Justify the financial and operational loss and appropriate signature required.	Notify agency and code non-compliant.
<b>C - Bidders Ethics Statement</b> Re: Section 4.3 IFB	Statement that bidder has "not given, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity..."	Notify agency and code non-compliant.
<b>D - CMBL Bidders Mailing List</b> Re: Section 2.33	List vendors used to solicit bids from CMBL and CPA certified HUB list.	Notify agency and code non-compliant.
<b>E - Order expired</b>	Contract expired (non-renewable) or no POCN on file before expiration date to renew the contract.	Notify agency and code non-compliant.
<b>F - Bid Tabulation</b> Re: Sections 2.11, 2.33, 2.35	Must show CMBL vendors contacted, bid amounts, all responses, the HUB source statement, and how awarded vendor was selected.	Notify agency and code non-compliant.
<b>G - Best Value Statement</b> Re: Sections 2.6, 2.11	A statement of how the agency determined the best value overall to buy with state funds. Items were NOT purchased via catalogue or state contract.	Notify agency and code non-compliant.
<b>H - Bid Opening Date After Start of Order</b> Re: Sections 2.37, 4.3 IFB	Bid Opening must be prior to start of order.	Notify agency and code non-compliant. Do not approve any payments prior to start of order.
<b>I - Definite Beginning and Ending Date</b>	Purchases must have beginning and ending dates. They may not be indefinite or open	Notify agency for amendment, if none code non-compliant.



Re: Sections 2.23, 4.3 IFB	ended. Invoices must fall within delivery or service dates.	
<b>J - Bid Opening, Date, Time, &amp; Location</b> (Physical Location) Re: Sections 2.23, 4.3 IFB	Must be a public bid opening, notification may be on the bid or with the bid solicitation. Must be a physical location.	Notify agency and code non-compliant.
<b>K - Funding Out Clause/Excess Obligations Clause</b> Re: Sections 2.23, 2.24	If contract crosses a biennium (2 year appropriation period) excess obligations are prohibited or failure to receive appropriations.	Notify agency and code non-compliant.
<b>L - Purchase Order/Requisition</b> Re: Sections 2.0, 2.35, 2.41	Written means of accepting a bid and notifying the winning vendor. May be a purchase order or letter of award.	Notify agency and code non-compliant. Do not approve payments. This instrument establishes the debt as required by the Texas Constitution.
<b>M - Proprietary Letter of Justification</b> Re: Section 2.21	Letter justifying a purchase without competitive bids signed by the executive director or authorized agent. Letter on file in Procurement Review.	Notify agency and code non-compliant. Do not approve payment.
<b>N - Beginning &amp; Ending Dates Not Shown on Purchase Order</b> Re: Sections 2.23, 2.57, 3.1	Purchase must have specific date limits established.	Notify agency and code non-compliant.
<b>P - HUB Vendors &amp; Source Statement</b> Re: Sections 2.28, 2.33, 2.34, 2.35	Informal and Formal Bids require the agencies to solicit bids from the CMBL/HUB mailing list. HUBs must be identified when the purchaser did not Use the CPA maintained list.	Notify agency and code non-compliant.
<b>Q - Family Code Clause</b> Re: 2.25, 4.3 IFB	Must be on the IFB. Bidder is disqualified if affirmation not signed.	Notify agency and code non-compliant. Do not approve payment if award vendor is disqualified.
<b>R - CPA Review of Specifications/Request for Proposal (RFP)</b> Re: Sections 2.11 (matrix), 2.13	Specs for service contracts exceeding \$100,000 per year must be approved by CPA purchaser prior to being mailed to vendors. Letter from CPA delegating purchase back to the agency and final IFB must be in the purchase file. CPA approval letter approving RFP process.	Notify agency and code non-compliant. CPA purchaser to review and send letter to agency if recommended changes not incorporated in IFB.
<b>S - Non-Delegated Purchase</b> Re: Sections 2.4, 2.5, 2.6, 2.7, 2.8, 2.9	Agencies may not purchase items if they are term contract, schedule, or to be purchased from a particular source without the "Best Value" statement on the on the purchase documents.	Notify agency and code non-compliant. Purchasing procedures & rules are dictated by the dollar amount or method procured.
<b>T - Affirmations 10.1 - 10.8</b>	Affirmation on the IFB. Bidder must certify to the clause.	Notify agency and code non-compliant.

Re: Sections 2.25, 4.3 IFB

<b>U - Texas Resident Bidder Statement</b> Re: Sections 2.25, 4.3 IFB	Affirmation on the IFB. Bidder must certify to the clause.	Notify agency and code non-compliant.
<b>V - Franchise Tax Statement</b> Re: Sections 2.25, 4.3 IFB	Affirmation on the IFB. Bidder must certify that the Company is not delinquent in the payment of franchise taxes. Agency should include Internet page showing vendor is in good standing at the time of award.	Notify agency and code non-compliant.
<b>W - Texas Marketplace Posting</b> Re: Sections 2.31, 2.41	Required verification for electronic posting for all bid opportunities exceeding \$25,000 (regardless of source of funds).	Notify agency and code non-compliant. Contract is void if not posted for the minimum required number of days.
<b>X - Authorized Purchasers Signature/Approval</b>	PO must be signed by an authorized agency purchaser. Check procurement plan for list of authorized signatures.	Notify agency and code non-compliant.
<b>Y - Agency Notified By Letter</b>	Code to indicate agency notified by letter of a non-compliant procurement and/or hold status.	Code non-compliant and attach a copy of the letter with the contract and file in the Agency File.
<b>Z - Other</b>	Code to indicate additional non-compliant procurement.	Notify agency and code non-compliant. Indicate on the compliance check sheet the nature of the problem.

### SECTION 3.1

REVISED DATE: 04/99

# Post-Procurement Audit Review

Post-Procurement & Payment Audits are conducted at least once during a biennium for each state agency for compliance with purchasing statutes, rules, and procedures. A random sample will be taken of all the appropriate categories. The agency will supply the complete purchasing package applicable to each Purchase Category Code (see Post – Procurement Agency Document Checklist). Document Type 9 purchase documentation must include the legal citation exempting the purchase from competitive bidding or the review authority of the Texas Comptroller of Public Accounts (CPA) (see Section 4.5 Exemptions). Document type 2 contracts are audited for compliance with purchasing procedures to ensure continued delegation to state agencies. Each PCC is audited for the following list of items:

1. The invoice matches the Purchase Order;
2. Informal bid taken with minimum 2 bids from HUBs (one from minority owned business and one from a women owned business any ethnicity);
3. The bidder mailing list is taken from the Centralized Master Bidders List (CMBL);
4. Source statements from the Historically Underutilized Businesses (HUB) list;
5. Formal written bids;
6. Bid tabulation (informal or formal);
7. Family Code statements or Bidder Affirmations;
8. Verifying the vendor identification number (VIN/TIN), name and address is the same on all documentation;
9. Verifying payment VIN/TIN against the awarded contract VIN/TIN;
10. Commodity class and item number are listed on purchase order;
11. The correct PCC is used;
12. The correct legal citation on exempt purchases (consult your legal counsel for more information);
13. Checking authorized signatures on proprietary justification letters;
14. Signed emergency purchase justification letters;
15. Authorized purchasing signatures;
16. Direct publication declaration statement on the purchase order;
17. Purchase Order Change Notice (POCN) for extending/renewing a contract;
18. Sales tax has not been paid by the agency on purchases;
19. Contracts crossing the biennium contain special funding/excess obligation clauses;
20. Gasoline posted terminal prices may be verified on date purchased;
21. Type of purchases (indicated by logs) made with credit cards;
22. EPLS (Excluded Parties List System) printout before contract award and contract renewal.
23. Verification of Electronic State Business Daily (ESBD) posting.

For additional information call Procurement Review at (512) 463-3246 or fax number (512) 475-0711.

Revised 9/2007

# TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

## POST-PAYMENT & PROCUREMENT REVIEW

### AGENCY DOCUMENT CHECKLIST

**PLEASE NOTE:**

- Supporting documentation must be submitted for each PCC code and Document Type 9.
- All purchases exceeding \$25,000 must be posted on the Electronic State Business Daily (ESBD) for the required minimum time period. Failure to post for the required time will void the contract. Verification of the posting is required in the purchase package.

<b>PCC A</b>  <b>TERM CONTRACT PURCHASE</b>	<input type="checkbox"/> Automated Term Contract PO with authorized signature <input type="checkbox"/> Invoice must match PO <input type="checkbox"/> Check freight charges stated on PO <input type="checkbox"/> Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable)
<b>PCC B</b>  <b>SCHEDULE PURCHASE</b>	<input type="checkbox"/> Scheduled PO issued by CPA <input type="checkbox"/> Invoice must match PO <input type="checkbox"/> Check freight charges stated on PO
<b>PCC C</b>  <b>NON- AUTOMATED TERM CONTRACT PURCHASE</b>	<input type="checkbox"/> Non-automated Term Contract PO <ul style="list-style-type: none"> <li>▪ Delivery terms and/or contract term defined</li> <li>▪ NIGP Class-Item Codes listed</li> </ul> <input type="checkbox"/> Invoice must match PO <input type="checkbox"/> Copy of the PO forwarded to CPA? <input type="checkbox"/> Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable)
<b>PCC D</b>  <b>PURCHASES OF INFORMATION TECHNOLOGY COMMODITIES OR SERVICES NOT AVAILABLE THROUGH DIR CONTRACTS</b>	<i>If using the new 34 TAC 20.391 Rule for Request for Proposals procedures:</i>  <input type="checkbox"/> PO with authorized signature <ul style="list-style-type: none"> <li>▪ Delivery terms and/or contract term defined</li> <li>▪ NIGP Class-Item Codes listed</li> </ul> <input type="checkbox"/> Invoice must match PO <input type="checkbox"/> All affirmations and applicable clauses included <input type="checkbox"/> Agencies required to determine whether the IT commodity or service is available from Department of Information Resources contract(s); if not, a DIR exemption must be included in the documentation indicating that the product or service may be otherwise procured; OR an exemption provided by the department of the Legislative Budget Board; or other exemption such as an express statutory exemption. <input type="checkbox"/> If the purchase exceeds the \$5,000 spot purchase limit, informal bidding requirements must be indicated in the documentation <input type="checkbox"/> If greater than \$5,000, but less than ceiling for commodity <input type="checkbox"/> Bid Tabulation required (\$5,000.01 and greater) <ul style="list-style-type: none"> <li>▪ CMBL printout verifying at least three (3) vendors were solicited, two (2) of which must be certified HUBs</li> <li>▪ CMBL printout must reflect date solicited</li> </ul> <input type="checkbox"/> At the time of award, file documentation must contain: <ul style="list-style-type: none"> <li>▪ Excluded Parties List System (EPLS) printout date prior to contract award</li> <li>▪ Awarded vendor's CMBL profile</li> <li>▪ Awarded vendor's product/service information pertaining to the award</li> </ul>

<p><b>PCC D</b></p> <p><b>(continued)</b></p>	<p>_____ Electronic State Business Daily (ESBD) posting printout if purchase is \$25,000</p> <p>_____ Emergency justification letter with authorized signature (if applicable)</p> <p>_____ Proprietary letter with authorized signature (if applicable)</p> <p>_____ For purchases over \$100,000, Historically Underutilized Business Subcontracting Plan must be documented</p> <p><i>If using an approved alternate method of procurement per 34 TAC §20.391, code as PCC D, but follow relevant procurement procedures; e.g., the IFB procedure for IT commodities between \$5,000 and \$25,000 would be coded PCC D, but following the PCC F pattern.</i></p>
<p><b>PCC E</b></p> <p><b>PURCHASES LESS THAN \$5,000.01</b></p>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>▪ Delivery terms and/or contract term defined</li> <li>▪ NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ Waiver form from TCI if purchased from another source</p> <p>_____ If the item is on term contract, verify the amount is within the minimum purchase amount designated or within the spot purchase limit per the contract</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Letter of Justification for purchases of non-recycled commodities/services over \$150 (if applicable)</p> <p>_____ EPLS printout, prior to contract award</p>
<p><b>PCC F</b></p> <p><b>COMMODITY PURCHASE FROM \$5,000.01 to \$25,000</b></p>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>▪ Delivery terms and/or contract term defined</li> <li>▪ NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Bid Tabulation</p> <ul style="list-style-type: none"> <li>▪ CMBL printout verifying at least three (3) vendors were solicited, two (2) of which must be certified HUB vendors</li> <li>▪ CMBL printout must reflect the date solicited</li> <li>▪ Bid tabulation must list all vendors solicited</li> <li>▪ Written approval from agency head or designee authorizing supplementation with non-CMBL vendors</li> </ul> <p>_____ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable)</p> <p>_____ Emergency justification letter with authorized signature (if applicable)</p> <p>_____ Proprietary letter with authorized signature (if applicable)</p> <p>_____ Letter of Justification for purchases of non-recycled commodities/services over \$150 (if applicable)</p> <p>_____ EPLS printout, prior to contract award</p>
<p><b>PCC G</b></p> <p><b>OPEN MARKET PURCHASE (solicited by CPA)</b></p>	<p>_____ Open Market PO for commodities exceeding \$25,000 and services exceeding \$100,000</p> <ul style="list-style-type: none"> <li>▪ Delivery terms and/or contract term defined</li> </ul> <p>_____ Invoice must match CPA PO</p> <p>_____ Check freight charge on PO (if applicable)</p>

<p><b>PCC H</b></p> <p><b>CREDIT CARD PURCHASE</b></p>	<p>_____ PO with authorized signature and/or Internal Log</p> <ul style="list-style-type: none"> <li>▪ NIGP Class-Item Codes listed</li> </ul> <p>_____ List on the PO the item purchased</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Comptroller's Vendor Hold printout for credit purchases over \$150.00</p> <ul style="list-style-type: none"> <li>▪ <b>SB 583 from Comptroller of Public Accounts</b></li> </ul> <p>_____ List of cardholders and their credit limit</p> <p>_____ All sales receipts or invoices must be included and signed by authorized user</p> <p>_____ EPLS printout, prior to contract award</p> <p><i>Note:</i> Procurement card cannot be used for automated nor non-automated contracts.</p>
<p><b>PCC I</b></p> <p><b>PURCHASES FROM DIR CONTRACT FOR AGENCIES</b></p>	<p><i>As of 9-1-2007 this Purchase Category Code includes TXMAS Schedule 70 contracts</i></p> <p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>▪ Delivery terms and/or contract term defined</li> <li>▪ NIGP Class-Item Codes listed</li> </ul> <p>_____ State DIR contract number on PO</p> <p>_____ Invoice must match PO</p>
<p><b>PCC J</b></p> <p><b>TERM CONTRACT BOOK PURCHASE</b></p>	<p><b>PCC J has been removed. PCC J was previously utilized for the purchase of books from the CPA non-automated term contract 715-M1. PCC C is the appropriate code use for this purchase. Procurement Review will not look at PCC J on purchases after 8-31-2007.</b></p>
<p><b>PCC K</b></p> <p><b>DIRECT PUBLICATION PURCHASE</b></p>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>▪ Delivery terms and/or contract term defined</li> <li>▪ NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Electronic State Business Daily (ESBD) posting printout if purchase is over \$25,000</p> <p>_____ Signed declaration statement, "Not available from any other source" must be documented on all direct publication orders</p> <p>_____ EPLS printout, prior to contract award</p>
<p><b>PCC L</b></p> <p><b>PERISHABLE PURCHASE</b></p>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>▪ Delivery terms and/or contract term defined</li> <li>▪ NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Bid Tabulation (\$5,000.01 and greater)</p> <ul style="list-style-type: none"> <li>▪ CMBL printout verifying at least three (3) vendors were solicited, two (2) of which must be certified HUB vendors</li> <li>▪ CMBL printout must reflect the date solicited</li> <li>▪ Bid tabulation must list all vendors solicited</li> </ul> <ul style="list-style-type: none"> <li>▪ Written approval from agency head or designee authorizing supplementation with non-CMBL vendors</li> </ul> <p>_____ Purchase Order Change Notice (POCN) for extending/renewing a contract</p>

<b>(continued)</b>	<p>(created prior to the expiration of contract) (if applicable)</p> <p>_____ Emergency justification letter with authorized signature (if applicable)</p> <p>_____ Proprietary justification letter with authorized signature (if applicable)</p> <p>_____ Electronic State Business Daily (ESBD) posting printout if purchase is over \$25,000</p> <p>_____ EPLS printout, prior to contract award</p>
<p><b>PCC M</b></p> <p><b>DISTRIBUTOR PURCHASE</b></p>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>▪ Delivery terms and/or contract term defined</li> <li>▪ NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ Bid Tabulation (\$5,000.01 and greater)</p> <ul style="list-style-type: none"> <li>▪ CMBL printout verifying at least three (3) vendors were solicited, two (2) of which must be certified HUB vendors</li> <li>▪ CMBL printout must reflect the date solicited</li> <li>▪ Bid tabulation must list all vendors solicited</li> <li>▪ Written approval from agency head or designee authorizing supplementation with non-CMBL vendors</li> </ul> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Purchase Order Change Notice (POCN) for extending/renewing a contract (created prior to the expiration of contract) (if applicable)</p> <p>_____ Emergency justification letter with authorized signature (if applicable)</p> <p>_____ Proprietary justification letter with authorized signature (if applicable)</p> <p>_____ Electronic State Business Daily (ESBD) posting printout if purchase is over \$25,000</p> <p>_____ EPLS printout, prior to contract award</p>
<p><b>PCC P</b></p> <p><b>BULK FUEL PURCHASE</b></p>	<p>_____ PO with authorized signature</p> <ul style="list-style-type: none"> <li>▪ Delivery terms and/or contract term defined</li> <li>▪ NIGP Class-Item Codes listed</li> </ul> <p>_____ Invoice must match PO</p> <p>_____ All affirmations and applicable clauses included</p> <p>_____ Bid Tabulation (\$5,000.01 and greater)</p> <ul style="list-style-type: none"> <li>▪ CMBL printout verifying at least three (3) vendors were solicited, two (2) of which must be certified HUB vendors</li> <li>▪ CMBL printout must reflect the date solicited</li> <li>▪ Bid tabulation must list all vendors solicited</li> <li>▪ Written approval from agency head or designee authorizing supplementation with non-CMBL vendors</li> </ul> <p>_____ List of cardholders and credit limits</p> <p>_____ All sales receipts or invoices must be included and signed by authorized user</p> <p>_____ Emergency justification letter with authorized signature (if applicable)</p> <p>_____ Proprietary justification letter with authorized signature (if applicable)</p> <p>_____ Electronic State Business Daily (ESBD) posting printout if purchase is over \$25,000</p> <p>_____ EPLS printout, prior to contract award</p> <p><i>(Note: Purchases made from a CCG Contract should be coded as a Document Type 9 and reference legal cite TGC, Section 2162.105.)</i></p>





<b>EMERGENCY PURCHASES OF GOODS AND SERVICES EXCEEDING \$25,000 (continued)</b>	<p> <input type="checkbox"/> Invoice must match PO  <input type="checkbox"/> All affirmations and applicable clauses included  <input type="checkbox"/> Signed bid from awarded vendor  <input type="checkbox"/> Emergency justification letter with authorized signature  <input type="checkbox"/> Electronic State Business Daily (ESBD) posting printout if purchase is over \$25,000  <input type="checkbox"/> Required statements for an emergency purchase <ul style="list-style-type: none"> <li>▪ Nature of emergency and cause</li> <li>▪ Estimated impact or damage either financial or otherwise that will occur by following normal procurement practices (general statements of loss or normal damage are not acceptable)</li> </ul> <input type="checkbox"/> EPLS printout, prior to contract award </p>
<b>PCC X  TEXAS MULTIPLE AWARD SCHEDULE (TXMAS)</b>	<p><i>As of 9-1-2007 PCC X does not include TXMAS Schedule 70 contracts</i></p> <p> <input type="checkbox"/> PO with authorized signature <ul style="list-style-type: none"> <li>▪ Delivery terms and/or contract term defined</li> <li>▪ NIGP Class-Item Codes listed</li> </ul> <input type="checkbox"/> State TXMAS contract number on PO  <input type="checkbox"/> PO forwarded to CPA or entered into CPA's automated system  <input type="checkbox"/> Proprietary letter with authorized signature (if applicable)  <input type="checkbox"/> Best value statement must be documented on the PO (if applicable)  <input type="checkbox"/> Electronic State Business Daily (ESBD) award posting printout if purchase is over \$25,000 </p>
<b>DOCUMENT TYPE 9  EXEMPT PURCHASES</b>	<p> <input type="checkbox"/> PO with authorized signature <ul style="list-style-type: none"> <li>▪ NIGP Class-Item Codes listed</li> </ul> <input type="checkbox"/> Legal cite applicable to the purchase must be listed on the purchase documentation (<b>required</b>) <ul style="list-style-type: none"> <li>▪ Example: TGC, Section 2162.105</li> </ul> <input type="checkbox"/> Invoice must match PO  <input type="checkbox"/> Electronic State Business Daily (ESBD) posting printout if purchase is over \$25,000  <input type="checkbox"/> EPLS printout, prior to contract award </p> <p><i>NOTE: Utility payments made using a payment instrument OTHER THAN a purchase order need not contain a purchase order number.</i></p>
<b>NOT ADDRESSED BY PCC CODE</b>	<p> <input type="checkbox"/> <b>State Use Report</b>  The State Use Report is a legislatively mandated report submitted by the 15th of each month listing purchases made as an exception to Human Resource Code 122.014 regarding specifications of products and services for sale to state agencies by TIBH. </p> <p> <input type="checkbox"/> <b>Procurement Plan (Due by November 30<sup>th</sup>)</b>  An agency must submit an entire Procurement Plan of each fiscal year. Updates must be submitted as necessary. If there are no updates to the plan in a fiscal year, a letter must be sent to indicate there are "no changes". Procurement Plan submittals or "no change" letters are due by November 30<sup>th</sup> of each year. </p> <p> <input type="checkbox"/> <b>Contract Advisory Team Review (CATRAD)</b>  Major contract solicitations over \$1 million in value must be submitted to the CATRAD. </p>

## SECTION 3.2

REVISED 09/2007

# **Recycled, Remanufactured and Environmentally Sensitive Products**

Expenditures for Recycled Material (Due January 1st)

Per Texas Government Code, Title 10, Subtitle D, Section [2155.448](#) each state fiscal year, the CPA, in coordination with the Recycling Market Development Board, by rule may identify recycled, remanufactured, or environmentally sensitive commodities or services and designate purchasing goals for the procurement of those commodities and services by state agencies for that fiscal year.

The law also requires agencies to provide information about purchases of recycled type products. The CPA electronically posts agency's purchasing history of recycled, remanufactured, and environmentally sensitive products at <http://www.window.state.tx.us/supportserv/prog/recycle/>. This report includes only those purchases made through the CPA. Not later than January 1st of each year, a state agency or institution shall deliver a report of the total expenditures for purchases for goods that have recycled material content that are remanufactured or environmentally sensitive and the amount spent in each category for the previous fiscal year. The report shall be delivered to CPA. This information is intended for use by the Recycling Development Board in its market development activities.

SECTION 4.0

REVISED DATE: 10/01

# **Nonresident Bidders Report**

The statute requiring nonresident bidder reports was repealed by House Bill 2753, Section 10. Nonresident bidders reports are no longer required. Since this repeal took effect immediately, the nonresident bidders report that was due the last business day of July, 2005, to the Legislative Budget Board is no longer required.

SECTION 4.1

REVISED DATE: 12/05

# **Procurement Plan (Due November 30th)**

In accordance with Texas Government Code, Title 10, Subtitle D, Section [2155.132](#) authorizes CPA to require each agency to formulate an agency procurement plan that identifies an agency's management controls and purchasing oversight authority in accordance with the policy guidance contained in the CPA Procurement Manual. A Procurement Plan must be on file at CPA and updates must be submitted as necessary. If there are no updates to the plan in a fiscal year, a letter must be sent to indicate there are “no changes”. Procurement Plan submittals or “no change” letters are due to CPA’s Procurement Review by November 30<sup>th</sup> of each year.

## **Contents of the Procurement Plan**

1. Organizational Chart of Purchasing Division/Office.
2. Credit Card Internal Procedures if participating in the Procurement Card Program.
3. Protest Procedures.
4. List and sample of signatures authorized to approve or sign a proprietary justification letter.
5. List and sample of signatures authorized to approve agency membership fees.
6. The training and certification status of the purchasing employees.
7. List of purchasers authorized to purchase on behalf of the State.
8. Invitation for Bid (IFB) form.
9. Internal purchasing procedures for agency.
10. Conflict of Interest Statement(s) (annually signed statement for each purchaser or a memo stating one is in the purchaser’s personnel file).
11. Internal purchasing procedures for EPLS (Excluded Parties List System).

SECTION 4.2

REVISED DATE: 9/2007

## Exemptions Document Type 9

The purchase of certain commodities and services may be exempt by specific statute from the purchasing authority of the Comptroller of Public Accounts (CPA), exempt from competitive bidding or may be required by statute to be procured through another specific purchasing method. Purchases of goods or services exempt from competitive bidding must have the specific legal cite allowing the exemption printed on the purchase order documentation. If there is no statutory authority to support the exemption, then following procedure must be followed:

- Agencies must attempt to competitively bid these goods or services when the bid threshold (currently \$5,000) is exceeded;
- If the estimated purchase amount exceeds \$5,000 and the ordering entity cannot solicit competitive bids for these goods or services, then the requisition and purchase order should be qualified as a proprietary procurement and a proprietary justification letter must be attached to the order. If not a proprietary purchase then you must attempt to competitively bid the purchase.

NOTE: Document Type 9 exempt purchases are subject to Post-Payment Procurement Review

<b><u>Item or Nature of Service</u></b>	<b><u>Section Reference</u></b>
<b>Auxiliary enterprises</b>	<b>2155.141</b>
<b>Blind-made goods or services offered for sale to state agencies</b>	<b>2155.138</b>
<b>Care/Treatment/Education services for wards and clients of the state by Texas Youth Commission</b>	<b>2155.143</b>
<b>Construction projects by or under the supervision of any public authorities created by the laws of this state; or state-aided local government projects of any character whatsoever</b>	<b>2166.004</b>
<b>Construction projects undertaken by Texas Department of Criminal Justice</b>	<b>2166.003(b)</b>
<b>Consulting services or services of a Private Consultant as defined in Texas Government Code, 2254.021 et seq.</b>	<b>2155.001</b>
<b>Council on Competitive Government contracts (Voyager, Grumman, Lone Star, Fuel Man, National Presort, etc.)</b>	<b>2162.105</b>
<b>Group purchasing program: Purchases by state owned hospital or clinics through a group purchasing program comprised of two or more hospital or clinic facilities</b>	<b>2155.139(b)</b>
<b>Health care purchases</b>	<b>2155.144</b>
<b>Health &amp; Human Service agency purchases</b>	<b>2155.144</b>
<b>Items required by statute to be purchased from a particular source</b>	<b>2155.132(f)(2)</b>

<b>Lease payments for district office space for certain agencies and programs</b>	<b>2167.002</b>
<b>Legislative agency purchases for the following agencies: 101, 102, 103, 104, 105, 116, 308 and 362</b>	<b>2155.203</b>
<b>Library materials &amp; services within a university or institutions of higher learning, state-owned hospitals, or clinics (including Amigos Library services) for certain limited purchases</b>	<b>2155.139(a)</b>
<b>Organized activities relating to instructional departments of institutions of higher learning &amp; similar activities of other state agencies</b>	<b>2155.141</b>
<b>Texas Department of Criminal Justice made goods</b>	<b>2155.065</b>
<b>Professional services &amp; fees: services listed in Texas Government Code, 2254.001 et seq.</b>	<b>2155.001</b>
<b>Purchases made from gifts or grants, including industrial grants or contracts in support of research or federal grants or contracts in support of research in aid payments (HEAF)</b>	<b>2155.140</b>
<b>Purchases of products &amp; services of workshops, organizations, or corporations whose primary purpose is training &amp; employing mentally retarded or physically handicapped persons (TIBH set-aside contracts)</b>	<b>2155.441</b>
<b>Repairs &amp; renovations to buildings excluded by CPA: letter of exclusion from TFC's Facility Construction and Space Management Division should be attached</b>	<b>2166.003(a)(7)</b>
<b>Repairs &amp; renovations to buildings &amp; projects by agencies listed</b>	<b>2166.003 2166.004</b>
<b>Residential space for Mental Health and Mental Retardation &amp; Texas Youth Commission</b>	<b>2167.001(b)(2) 2167.001(b)(3)</b>
<b>Services of an employee of a state agency</b>	<b>2155.001</b>
<b>Utilities (services of public utilities): natural gas, electric, water, sewage &amp; garbage services, other services &amp; charges for utility services, and local telephone service</b>	<b>2155.001</b>
<b>Vehicle maintenance &amp; repair: any contract for repair of vehicles made by the Inter-Agency Services Division of CPA.</b>	<b>2171.102(c)</b>
<b>Veterans' Land Board purchases in connection with improvements, repairs, or maintenance of land or other activities undertaken by Veterans' Land Board with respect to land</b>	<b>2155.149</b>

**Note:** If not exempt by statute, the General Appropriations Act or Texas Government Code, Title 10, Subtitle D, Section 2151 et seq., the purchase must be competitively bid or the purchase order should be qualified as a proprietary procurement and a proprietary justification letter should be attached to the order. Please consult your agency's legal counsel for further exemptions applicable to your agency.





# **Glossary of Purchasing Terms**

## **Advanced Technology Clause**

An affirmation clause required on all Automated Information Systems (AIS) products.

## **Approved Products List (APL)**

A list of products that have been approved prior to the bidding process that meet a defined specification. Referred to as a qualified products list.

## **Assignments**

The legal transfer of a right or property.

## **Award**

The act of accepting a bid, thereby forming a contract between the state and a bidder.

## **Automated Term Contract**

A contract by which orders can be processed by the CPA computer system when the agency provides the required coded information on the Contract Purchase Requisition. Eliminates the need for the agency to describe items on the requisition.

## **Best Interests of the State**

Most advantageous to the state in light of all relevant circumstances.

## **Bid**

An offer to contract with the State submitted in response to a bid invitation issued by the CPA or an issuing entity.

## **Bid Deposit**

A deposit required of bidders to protect the state in the event a low bidder attempts to withdraw its bid or otherwise fails to enter into a contract with the state. Acceptable forms of bid deposits are limited to: cashier's check, certified check, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas; a surety or blanket bond from a company chartered or authorized to do business in Texas and United States Treasury listed; a United States Treasury Bond; or certificate of deposit.

## **Bid Sample**

A sample required to be furnished as part of a bid, for evaluating the quality of the product offered.

## **Bid Tabulation**

The recording of bids and bidding data for purposes of bid evaluation and record keeping.

## **Bidder**

An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees, and representatives.

## **Bidder Affirmation Clauses**

Bidder affirms by signature on the Invitation for Bid (IFB) compliance with seven affirmations required by Texas Government Code.

**Biennial Period**

Occurring every two years.

**Biennium (State of Texas)**

A period of 24 consecutive months, beginning on September 1 of each odd numbered year.

Example: September 1, 1997 through August 31, 1999.

**Blanket Bond**

A performance bond which insures a bidder's performance on two or more contracts in lieu of separate bonds for each contract. The amount for a blanket bond shall be established by the CPA and contracting entities based on the bidder's annual level of participation in the state purchasing program. Acceptable forms of blanket bonds are those described in the definition of bid deposit.

**Blanket Order**

A purchase order with a vendor for a specified time period, specific commodity, and an estimated quantity to be delivered as requested. Use of minimum call out quantities is advised for this type of order.

**Brand Name**

A trade name or product name which identifies a product as having been made by a particular manufacturer.

**Cash Discounts**

A discount offered for paying cash at time of purchase.

**Centralized Master Bidders List (CMBL)**

A list maintained by the CPA containing the names and addresses of prospective bidders

**Certification**

State agency personnel completing the required training and continued education program will have certified purchasing authority to approve purchase orders on behalf of the State of Texas and their prospective agency.

**Class and Item**

The classification system found in the CPA Commodity Book that identifies items and services.

**Commodity**

Supplies, materials or equipment listed for commodity class and item numbers 005 through 900.

**Commodity Book**

Published by the CPA which contains class and item numbers.

**Competitive Bidding**

The process of inviting and obtaining bids from competing sources in response to advertised competitive specifications, by which an award is made to the lowest and best bidder meeting the specifications. The process contemplates giving potential bidders a reasonable opportunity to bid, and requires that all bidders be placed on the same plane of equality. Each bidder must bid on the same advertised specifications, terms, and conditions in all the items and parts of a contract. The purpose of competitive bidding is to stimulate competition, prevent favoritism, and secure the best goods and services at the lowest practicable price, for the benefit of the state. Competitive bidding cannot occur where contract specifications, terms, or conditions prevent or unduly restrict competition, favor a particular vendor, or increase the cost of goods or services without providing a corresponding benefit to the state.

**Competitive Specifications**

A specification stated in such a manner that two or more bidders can meet the specifications on the same plane of equality.

**Confirmation Order**

A purchase order issued to a vendor, listing the commodities and terms of an order placed verbally, or otherwise, in advance of the issuance of the purchase order. Also called Confirmation Order.

**Consumable Procurement Budget**

That portion of an ordering entity's budget as identified by the comptroller's expenditure codes attributable to consumable supplies, materials, and equipment.

**Contract Administration**

Contract administration requires dedication and persistence on behalf of the purchaser. It is a critical element in the procurement cycle and must be carried out in all purchasing operations.

**Cooperative Purchasing**

A program for qualified entities to use state purchasing resources.

**Delegated Purchase**

A purchase made by an agency under the authority of the CPA and subject to CPA rules and procedures.

**Design Specifications**

A specification describing the essential physical characteristics which an item bid must possess to be considered for award and so detailed as to describe how the product is to be manufactured.

**Director**

The Director of the CPA's Procurement Division.

**Direct Publication**

Purchases of publications directly from the publisher. This includes; books, software, and software maintenance tied to the original purchase.

**Discount-From-List**

Requires insertion of net unit prices on the Invitation for Bids (IFB) for Automated term contracts. On Non-Automated term contracts the manufacturer must submit a printed price list/catalog from which prices are to be figured. Prices in this category cannot be increased for ninety (90) days after the contract begins, unless otherwise noted in the IFB.

**Distributor Purchase**

The purchase of repair parts for a unit of major equipment that are needed immediately or as maintenance contracts for laboratory/medical equipment.

**Early Payment Discount**

A discount from the purchase price allowed to the purchaser if payment is made within a specified period. Will not be used in determining low bid.

**Electronic Data Interchange (EDI)**

Exchange of information electronically between business parties in a structured format, including but not limited to computer direct or indirect electronic information exchange, exchange of computer tapes and disks, and tele-facsimile transmission.

**Emergency Purchase**

A purchase of goods or services so badly needed that an agency will suffer financial or operational damage unless they are secured immediately.

**Environmentally Sensitive Products**

Products that protect or enhance the environment, or that damage the environment less than traditionally available products.

**Equivalent Product**

A product that is comparable in performance and quality to the specified product.

**Escalation Clause**

A clause in a bid providing for a price increase under certain specified circumstances.

**F.O.B.**

"Free on Board." This term refers to the point at which the title to goods transfers. Does not relate to freight charges.

**Fiscal Year (State of Texas)**

A period of 12 consecutive months, beginning September 1 of each year.

**Fixed Price Contract**

A contract which provides for a firm price which cannot be increased for the full term of the contract.

**Formal Bid**

A written bid submitted in a sealed envelope in accordance with a prescribed format, or an electronic data interchange transmitted to the commission in accordance with procedures established by the commission.

**Group Purchasing Program**

A purchasing program that offers discount prices to two or more institutions of higher education.

**Heaf**

Higher Education Assistance Funds.

**Historically Underutilized Business (HUB)**

A corporation formed for the purpose of making a profit in which 51 percent or more of all classes of the shares of stock or other equitable securities are owned by one or more socially disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation, and management. Groups include: Black Americans, Hispanic Americans, Women, Asian Pacific Americans, and Native Americans.

**Interagency Contract (IAC)**

Understanding between two or more agencies as authorized by Chapter 771 of the Texas Government Code.

**Informal Bid**

An unsealed, competitive bid submitted by letter, telephone, telegram, or other means used for purchases less than \$10,000.

**Inspection**

Examination and/or testing of merchandise to determine whether it has been received in the proper quantity and condition, and to verify that it conforms to the applicable specifications.

**Inspection Report**

A report made as a result of a CPA inspection, informing the purchasing authority of a products compliance with advertised specifications.

**Installment Sale**

A sale made with the agreement that the purchased goods will be paid for in fractional amounts over a specified period of time.

**Internal Repairs**

Repairs in which the extent and cost of which cannot be determined until the commodity is disassembled and evaluated. By definition an internal repair must contain labor but may also include parts.

**Invitation for Bids (IFB)**

A written request for submission of a bid; also referred to as a bid invitation.

**Late Bid**

A bid that is received at the place designated in the bid invitation after the time set for bid opening.

**Lease of Equipment**

A contract granting use of equipment or other fixed assets for a specified time in exchange for payment. Title remains with the vendor.

**Lease Purchase**

An installment sale which gives the lessee the right to purchase the equipment at an agreed upon price under certain conditions. Title passes from seller to purchaser if and at the time the option to purchase is exercised.

**Letter of Award**

Letter of notification announcing award of the contract to bidder. May be used in lieu of issuing a Purchase Order to awarded vendor.

**Life-Cycle Costing**

A procurement technique which considers operating, maintenance, acquisition price, and other costs of ownership in the award of contracts to ensure that the item acquired will result in the lowest total ownership cost during the time the item's function is required.

**List of Approved Equipment**

A list of items available under term contracts for purchase by school districts through the commission pursuant to Texas Education Code, Section 21.901.

**Local Government**

A county, municipality, school district, special district, junior college district, or other legally constituted political subdivision of the state.

**Manufacturer's Price List**

A price list published in some form by the manufacturer and available to and recognized by the trade. The term does not include a price list prepared especially for a given bid.

**Minor Technicality**

A requirement in a bid invitation which, if waived or modified by the commission when evaluating bids, would not give a bidder an unfair advantage over other bidders or result in a material change in the contract.

**Multiple Award Contract Procedure**

A purchasing procedure by which the commission establishes one or more levels of quality and performance and makes more than one award at each level.

**Non-Automated Contract**

A term contract that cannot be processed through the CPA's automated processing equipment. The purchase order is prepared by the agency and mailed directly to the vendor with a copy to the CPA.

**Non Resident Bidder**

A bidder whose principal place of business is not in Texas, but does not include a bidder whose majority owner or parent company has its principal place of business in Texas.

**Notice of Award**

A letter signed by the Director or his designee which awards and creates a term contract.

**OEM**

Original equipment manufacturer.

**Offer**

A proposal by one party to another which is intended of itself to create legal relations on acceptance by the party to whom it is made.

**Open Market Purchase**

A purchase of goods, usually of a specified quantity, made by buying from any available source in response to an open market requisition through the CPA.

**Ordering Entity**

A state agency or local government that requisitions goods or services through the CPA.

**Payment Bond**

A deposit, pledge, or contract of guaranty supplied by a successful bidder to protect the state against loss due to the bidder's failure to pay material suppliers and subcontractors. Acceptable forms of payment bonds are: cashier's check, certified check, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas; a surety or blanket bond from a company chartered or authorized to do business in Texas; United States treasury bond; or certificate of deposit.

**Performance Bond**

A deposit, pledge, or contract of guaranty supplied by a successful bidder to protect the state against loss due to the bidders inability to complete the contract as agreed. Acceptable forms of performance bonds are those listed in the definition of payment bond.

**Performance Specification**

A specification setting out performance requirements that have been determined to be necessary for the item involved to perform and last as required.

**Perishable Goods**

Goods that are subject to spoilage within a relatively short time and that may be purchased by agencies under delegated authority.

**Pooling Order**

See Scheduled Purchase.

**Post-Consumer Materials**

Finished products, packages, or materials generated by a business entity or consumer that have served their intended end uses, and that have been recovered or otherwise diverted from the waste stream for the purpose of recycling.

**Pre-Consumer Materials**

Materials or by-products that have not reached a business entity or consumer for an intended end use, including industrial scrap material, and overstock or obsolete inventories from distributors wholesalers, and other companies. The term does not include materials and by-products generated from, and commonly reused within, an original manufacturing process or separate operation within the same or a parent company.

**Principal Place of Business in Texas**

A permanent business office located in Texas from which a bid is submitted and from which business activities are conducted other than submitting bids to governmental agencies, where at least one employee works for the business entity submitting bids.

**Procurement Card**

State term contract credit card program designed as a payment method to streamline small dollar purchases.

**Proprietary**

Products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright or trade secret law. A product or service is proprietary if it has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services.

**Protest Procedures**

Procedures for resolving vendor protests relating to purchasing issues.

**Public Bid Opening**

The opening of bids at the time and place advertised in the bid invitation, in the presence of anyone who wishes to attend. On request of any person in attendance, bids will be read aloud.

**Purchase Orders**

(A) Open Market purchase order - A document issued by the commission to accept a bid, creating an open market purchase contract.

(B) Automated Contract purchase order - A release order issued by the commission under an existing term contract and pursuant to a requisition from an agency.

(C) Non-Automated Contract purchase order - An order issued by the agency under an existing term contract with a copy to the commission.

**Purchasing Functions**

The development of specifications, receipt and processing of requisitions, review of specifications, advertising for bids, bid evaluation, award of contracts, and inspection of merchandise received. The term does not include invoice, audit, or contract administrative functions.

**Research Funds**

Higher education funds to promote the advancement of technology or research projects.

**Recycled Material Content**

The portion of a product made with recycled materials consisting of pre-consumer materials (waste), post-consumer materials (waste), or both.

**Recycled Materials**

Materials, goods, or products that contain recyclable material, industrial waste, or hazardous waste that may be used in place of raw or virgin materials in manufacturing a new product.

**Recycled Product**

A product that meets the requirements for recycled material content as prescribed by the rules established by the Texas Natural Resource Conservation Commission in consultation with the Comptroller of Public Accounts.

**Remanufactured Product**

A product that has been repaired, rebuilt, or otherwise restored to meet or exceed the original equipment manufacturer's (OEM) performance specifications; provided, however, the warranty period for a remanufactured product may differ from the OEM warranty period.

**Rent**

The payment for the use of property.

**Request for Information (RFI)**

To be used when the purchaser cannot clearly identify product requirements/specification.

**Request for Offer (RFO)**

To be used in the catalogue purchasing program by contacting a least three vendors for offers or quotations of prices.

**Request for Proposal (RFP)**

A written request for proposals concerning goods or services the state intends to acquire by means of the competitive sealed proposal procedure. The solicitation document used in the competitive-sealed proposals process. The procedure allows changes to be made after other proposals are opened and contemplates that the nature of the proposals and/or prices offered will be negotiated prior to award.

**Request for Quotation (RFQ)**

To be used in the catalogue purchasing program by contacting a least three vendors for a quotations of prices. The document generally used for seeking competition on small purchases or on any purchase lower than the amount that requires competitive sealed bidding.

**Requisition**

An internal document by which a using agency requests the procurement department to initiate a procurement. (A) Open Market purchase requisition - An initiating request from an agency describing needs and requesting the commission to purchase goods or services to satisfy those needs. (B) Term contract purchase requisition - A request from an agency for delivery of goods under an existing term contract.

**Salvage Value**

The estimated value of a property when the user completes their use of the property.

**Scheduled Purchase**

A purchase with a prescheduled bid opening date, allowing the CPA to combine orders for goods.

**Sealed Bids**

A formal bid.

**Service**

The furnishing of skilled or unskilled labor or professional work but does not include professional services



covered by the Professional & Consulting Services Act (defined in Chapter 2254 of the Texas Government Code), or an employee of a ordering entity, and services of public utilities.

**Set-Aside Contract**

Term often used when referring to Texas Industry for the Blind & Handicapped (TIBH) catalogue and contracts.

**Short Bid List**

A process to select potential bidders for an open market requisition submitted to the CPA, within an ordering entity's delegated purchasing authority, which encourages HUB participation.

**Solicitation**

An invitation for bids or a request for proposals.

**Specification**

A description of what the purchaser requires and what a bidder or proposer must offer.

**Standard**

The established and fixed measure used in assessing quality or performance.

**Standing Order**

Similar to a blanket order except it has specified quantities and specified delivery dates.

**Surplus**

Federal and State surplus property programs administered by the TFC. Each program has its own laws, rules, and procedures.

**Terms & Conditions**

The provision specifying the nature of a contract.

**Term Contract Book**

Published by the CPA which contains contract information coded for use on contract requisitions or contract purchase orders.

**Term Contract Purchase**

A purchase by an agency under a term contract which established a source of supply for particular goods at a given price for a specified period of time. This information is also located on the Internet.

**Texas Council for Purchasing from People with Disabilities**

This entity is not a state agency. The council approves products and services to be included in the TIBH catalogue/contracts.

**Texas Department of Criminal Justices (TDCJ)**

Goods and services may be purchased directly from this state agency without competitive bidding per the Texas Prison Made Goods Act, Chapter 497 on the Texas Government Code. The Institutional Division of TDCJ offers a Texas Correctional Industries (TCI) catalogue.

**Texas Government Code**

The State Purchasing and General Services Act amended through the 1997 Regular Session of the 75th Legislation.

**Texas Marketplace**

State agencies making procurements exceeding \$25,000 without regard to source of funds will send the bid to the Texas Department of Commerce to be electronically posted in an electronic format.

**Texas Resident Bidder**

A bidder with its principal place of business in Texas, including a bidder whose majority owner or parent company has its principal place of business in Texas.

**Texas Specification**

A specification adopted by the CPA and used whenever possible in the purchase of the item involved. Established standard of minimum quality for items or services purchased in volume by the state.

Title

Ownership.

**Total Expenditures on Products with Recycled Material Content, Remanufactured Products, and Environmentally Sensitive Products**

The total direct acquisition costs (vendor selling price plus delivery costs) of all such products.

**Unit Price**

The price of a selected unit of a good or service, e.g., price per ton, per labor hour, or per foot.

**USAS**

Acronym for the Uniform Statewide Accounting System.

**Vendor**

A supplier of goods or services to the state.

**Written Data**

Data which is expressly required to be submitted in writing. A bid invitation that expressly requires the submission of written data with the bid must include the following statement or its substantial equivalent: "Failure to provide the required information with the bid response will automatically disqualify the bid from consideration for award in connection with this transaction."

**Year 2000 Clause**

This warranty is required on all documents and contracts involving the purchase of products to be delivered and/or installed when such products contain electronic components or devices must be able to accurately process valid date data.

SECTION 4.6

REVISED DATE: 06/98

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